

ARIZONA

DEPARTMENT OF PUBLIC SAFETY



FIREARMS-SAFETY INSTRUCTOR PROGRAM

FOR

ARIZONA CONCEALED WEAPON PERMITS

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LEGAL ISSUES

LEGAL ISSUES RELATING TO THE USE OF DEADLY FORCE

By Michael P. Anthony

(With updated 2005 legislation)

(Version 11.1 - August, 2005)

Course curriculum for fulfilling the requirements
of A.R.S. § 13-3112.O.3(a) & (f),
including legal and judgmental shooting requirements
for permit renewal under § 13-3112.L & M and Department of
Public Safety regulations pursuant thereto

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I. OVERVIEW OF CRIMINAL AND CIVIL LAWS PERTAINING TO FIREARMS AND THE USE OF DEADLY FORCE

A. Introduction - A.R.S. § 13-3112: Concealed Weapon Permit

A.R.S. § 13-3112.O.3, as amended effective August 11, 2005 (referred to here as the "CCW Law"), requires an applicant for a concealed-weapon permit to complete 8 hours of course instruction, approved by the Department of Public Safety ("DPS") in the following areas: (a) legal issues relating to the use of deadly force, (b) weapons care and maintenance, (c) mental conditioning for the use of deadly force, (d) safe handling and storage of weapons, (e) marksmanship, and (f) judgmental shooting. The first of these areas, legal issues relating to the use of deadly force, includes criminal and civil legal principles that will be incorporated into other areas of required training, especially (c) mental conditioning for the use of deadly force and (f) judgmental shooting. Legal issues are also an integral part of the two hour refresher training required to renew a CCW permit. Therefore, an understanding of the legal issues relating to the use of deadly force is a necessary foundation for completing training to obtain or renew a concealed-weapon permit.

You must understand that your instructor cannot teach you all the criminal and civil laws that affect your carrying and use of a firearm in this short course, and your instructor cannot give you legal advice about any specific case in which you might be involved. Your instructor will review the laws that are required by the CCW Law and the DPS to be taught in this short course. Your instructor will also cover additional laws that are important to know about.

First, you will examine the differences between criminal and civil law. These differing procedures mean that you have very different rights, risks and liabilities in criminal and civil cases. Next, you will examine criminal laws relating to firearms. Then, you will review civil laws relating to firearms. Next, and most important, you will study the circumstances under which you are justified in using a firearm or other deadly physical force against another person, and you will try to apply these laws to common situations you might face so that you can develop judgmental shooting skills. Finally, you will look briefly at additional laws

affecting your right to carry a firearm, and you will review the legal principles that you must incorporate into judgmental shooting. Keep in mind that the criminal and civil laws you will review are constantly changing. This is one of the reasons why the CCW Law requires you to have refresher training every five years to renew your concealed weapon permit.

B. Overview and comparison of criminal and civil law

If you violate a **criminal law**, the state can prosecute you, it can fine you, it can imprison you, and, in the most serious cases, it can even execute you. If you violate a **criminal law**, you may also violate a **civil law** and your victim and/or your victim's family might sue you to recover money from you or obtain a court order against you. It is possible to violate a **civil law** without violating any **criminal law** and vice versa. If you violate only a **civil law**, the person you injure and others related to that person can still sue you to recover money from you or obtain a court order against you. During this course, you will study the criminal and civil laws that apply to carrying, displaying and using a firearm. You must obey these laws when you carry a firearm, concealed or otherwise, and you must combine these laws with other considerations, such as tactics, safety, environmental considerations, type of firearm, your personal abilities with a firearm, your moral values, etc. The combining of the law with these other considerations is called judgmental shooting.

1. General description of criminal laws

Criminal laws are "statutes" that have been enacted by government legislation. In Arizona, the statutes are named "Arizona Revised Statutes," and they are numbered by sections. They are abbreviated "A.R.S. §_____." Criminal laws are affected by politics, compromise, special interests, public pressure, time constraints and the committee process in the legislature. As a result, criminal laws often contain vague, ambiguous, confusing or even conflicting provisions. Politicians in the city, county, state and federal governments, anxious to "do something" about society's problems, have created a bewildering array of confusing and sometimes conflicting criminal laws affecting your use of firearms.

You should not assume that you understand a criminal statute by merely reading it. Courts determine the meaning of criminal statutes, and they sometimes do so with bizarre results. If a criminal statute is too confusing, or if it conflicts with higher laws, such as the Constitution, the courts may decide that the statute is ineffective, partially unenforceable or wholly unenforceable. The legal principles used by the courts to interpret

the meaning of criminal statutes have evolved over centuries, and scholars argue endlessly over how the laws should be interpreted. In other words, you should not assume that you understand the meaning of a criminal law by simply reading a statute and attaching your own meaning or dictionary definitions to it.

II. CRIMINAL PROCEDURE COMPARED TO CIVIL PROCEDURE

Before examining specific criminal and civil laws, it is important to understand important differences between these laws - the differing rules under which the laws are applied. These rules are called "procedure."

A. Rights applicable to criminal cases that are not applicable to civil cases

In criminal cases, the government prosecutes the accused, who is presumed innocent, until proven guilty "beyond a reasonable doubt".¹ In the course of the criminal investigation and trial, the accused has procedural protections guaranteed by the U.S. Constitution.

1. Self-incrimination - Fifth Amendment

In the U.S., the government cannot force a person to give potentially incriminating statements. This protection extends to police questioning and all phases of the trial.

2. Double jeopardy - Fifth Amendment

Generally, the accused cannot be tried twice for the "same crime." While it is possible for each different governmental authority, e.g., federal and state, to try an accused for the same acts, those acts are different crimes under different statutes. Retrials after a mistrial or reversal on appeal do not constitute being tried twice because the first trial never became final.

3. Right to counsel - Sixth Amendment

The accused is entitled to counsel in any felony case. If the

¹ Although criminal prosecutions under state law in Arizona must be proven beyond a reasonable doubt, if the accused asserts the insanity defense, the accused must prove insanity by clear and convincing evidence (A.R.S. § 13-502).

accused cannot afford to hire counsel, the court will appoint counsel for the accused. Public defenders are paid by the government to represent accused persons in criminal trials.

4. Searches and seizures - Fourth Amendment

The government is generally prohibited from searching those places in which a suspect has a reasonable expectation of privacy, unless a search warrant is first granted by a court, based upon a showing that there is probable cause to believe a crime has been committed and that the requested search is reasonably calculated to lead evidence of that crime.

5. Jury trial - Sixth Amendment (U.S. Const.) & Art. 2, § 23 (Ariz. Const.)

In a criminal case, the accused is entitled to a jury trial to determine his guilt or innocence.

B. Civil law procedure

In a civil case, a private party or the party's lawyer prosecutes the case against the defendant. The defendant is not presumed innocent. Both sides present their cases, the competing evidence is balanced, and the side with the "greater weight of evidence" or "preponderance of evidence" wins. There is a Seventh Amendment [Art. 2, § 23 (Ariz. Const.)] right to a jury in civil cases at "common law," but the federal courts have ruled that this right applies only to civil suits of the type that could be maintained under common law at the time the Seventh Amendment was adopted (September 25, 1789), and the Sixth Amendment jury right does not apply to civil cases. Arizona courts, statutes and rules also have limited the types of civil cases to which a right to jury applies. Moreover, under some statutes and rules of procedure, if neither of the parties to a civil suit demands a jury trial within specified times, the right to a jury trial (when it exists) can be lost. The defendant in a civil case has no protection against searches and seizures and no protection against giving evidence that will hurt his case. Indeed, under Arizona civil procedure, the defendant is **required** to reveal all known evidence that has a bearing on the case, even if the evidence hurts the defendant's case and helps the other side. If the defendant refuses to answer questions, the court (or the jury) can presume the answers would have hurt the defendant's case. The defendant must provide his own

counsel, and if he cannot afford to hire a lawyer, the government will not provide one for him. If the defendant loses, he will likely be responsible for court costs and might be required to pay the other side's attorneys' fees and costs. If the defendant injures more than one person, each injured person might be able to sue the defendant at different times in different courts. The defendant can be asked and required to produce documents and other evidence, and cannot refuse so long as the request is reasonably calculated to lead to the discovery of evidence bearing upon the lawsuit.

C. Overview of differences between civil and criminal law

CRIMINAL PROCEDURE

CIVIL PROCEDURE

Enforced by Government

Enforced by individuals (mostly)

Right to Counsel

No right to counsel unless you can pay

Right to Jury Trial

Limited Jury Trial Rights

Right Against Self-Incrimination

Silence Can Be Used Against Defendant; Defendant Is Required to Disclose All Relevant Information

Right Against Unreasonable Searches and Seizures

Defendant Must Disclose All Relevant Information, Documents, Evidence, Witnesses, Etc.

Proof of Guilt Required "Beyond A Reasonable Doubt"

Proof by "Preponderance of the Evidence" or "Greater Weight of the Evidence"

Penalties Include Fines, Imprisonment, and Death

Penalties Limited to Money (Primarily) (Most Insurance Policies Do Not Cover Intentional Shootings)

D. Summary of differences between civil and criminal law

Criminal laws are enforced by government; the accused is entitled to counsel for serious charges carrying one year or more penalty; the

accused has the right to a jury trial; the accused has the Fifth Amendment right against self-incrimination; the accused is protected against unreasonable searches and seizures; the accused must be proven guilty beyond a reasonable doubt; if convicted, punishment is by probation, imprisonment, parole, fines and/or restitution, or execution.

Civil laws are enforced by lawsuits from private persons (plaintiffs), usually with the aid of private lawyers; there is no right to counsel (defendant must hire own counsel); there is no Fifth Amendment right (silence can be used against you); incriminating evidence can be requested or subpoenaed without any showing of probable cause; proof of liability is by preponderance of evidence; right to a jury trial has restrictions; "damages" in the form of monetary judgments are awarded to successful plaintiffs; liability (homeowner's) insurance usually will not cover intentional shootings and may exclude negligent firearms injuries.

E. Nonliability for Civil Damages Sustained in Criminal Act

1. Arizona has a special statute, A.R.S. § 12-712, that bars a criminal from recovering for damages sustained by the criminal as a result of the negligence or gross negligence of any person while the criminal is committing, attempting to commit, or fleeing the scene of a felony criminal act, or from a victim as a result of the negligence or gross negligence of the victim while the criminal is committing or attempting to commit a misdemeanor criminal act against the victim or the victim's property.

III. CRIMINAL LAWS CONCERNING USE OF DEADLY FORCE AND FIREARMS (Title 13, Arizona Revised Statutes)

We will now review examples of criminal law violations of particular importance to anyone carrying a firearm (note how the use of a firearm can satisfy particular elements of criminal offenses).

A. Ch. 11: Murders, negligent homicide and manslaughter

If you kill someone with a firearm, without legal justification, you have violated a criminal law for which you can be imprisoned or executed. Depending on the circumstances, the criminal violation would be negligent homicide, manslaughter, second degree murder or first degree murder. A.R.S. §§ 13-1101 - 1105.

1. Negligent homicide (with or without firearm), A.R.S. § 13-1102

- a. Criminal negligence, which
- b. results in death of another person

[Example #1: You get drunk and discharge a firearm in the city without intending to hit anyone, but you accidentally kill another.]

[Example #2: You go shooting in the desert, without checking downrange. Two people are camping or hiking downrange, and you do not see them. One of your shots hits and kills one of the campers or hikers.]

2. Manslaughter (with or without firearm), A.R.S. § 13-1103

- a. Recklessly causing the death of another person;

[Example: You enter a convenience store and see an armed man, holding a gun to the clerk's head. You correctly surmise that a robbery is in progress. You pull your gun and shoot ten times at the robber, but you miss him. Unfortunately, one or more of your shots kills another customer in the store.]

or

- a. Adequate provocation by the victim,
- b. resulting in heat of passion or sudden fight, and
- c. commit second degree murder;

[Example: You come home from work to find your spouse and lover in bed together. You fly into a rage and you immediately shoot your spouse or your spouse's lover.]

or

- a. Intentionally aiding another to commit suicide;

[Example: You give your gun to someone who asks to borrow it to kill himself.]

or

- a. Coerced with deadly force that a reasonable person could not resist into
- b. committing second degree murder, *i.e.* intentional killing without premeditation/ planning.

[Example: A madman grabs your child or spouse, holds a gun to his/her head or a knife to his/her throat and demands that you shoot another person or he will kill your loved one.]

or

- a. Knowingly or recklessly causing the death of an unborn child by physically injuring the mother under circumstances that would be murder if the mother had died.

3. Second degree murder (with or without firearm), A.R.S. § 13-1104

- a. **Intentionally** causes death of another (without additional elements for first degree murder) (use of firearm is evidence of "intent" to cause death);

[Example: You are walking in the mall, when a stranger bumps into you. You pull your gun, say "thanks for making my day" and you intentionally shoot and kill the stranger.]

or

- a. Conduct which person **knows will cause death or serious bodily injury**, which
- b. Causes death of another person.

Use of a firearm in killing is evidence that person knew that his/her conduct would cause death or serious bodily injury.

[Example: You are walking in the mall, when one of your friends dares you to shoot toward a crowd of shoppers. You pull your gun and fire a shot toward the crowd, not intending to shoot or kill anyone in particular, but your shot kills a person in the crowd.]

4. First degree murder (with or without firearm), A.R.S. § 13-1105

- a. **Premeditation** (planning to kill),
- b. conduct which person **intends or knows will cause death**, and
- c. causes death of another person;

[Example: You never use your CCW permit, *i.e.*, you never carry a firearm, concealed or otherwise. You learn that your cheating business partner, with whom you have been arguing with for years, is going to be alone at a desolate location, so you decide to "even the score." You take your gun and CCW permit, go to the desolate location, wait for your partner to arrive, and shoot your partner, killing him.]

or

- a. Kills someone while committing certain other crimes.

[Example #1: You meet an attractive, young woman and follow her home. You try to talk your way into her house, but she refuses to let you in. You push her inside and threaten to kill her if she does not have sex with you. After raping her, you panic and shoot her to ensure she cannot tell the police.]

[Example #2: You need money, so you decide to hold up a convenience store. You enter the store, put a gun to the clerk's head and demand all the money in the cash register. As the clerk opens the cash register, he reaches for a gun that you see under the counter, and you shoot him before he can shoot you.]

B. Ch. 12: Endangerment, threatening, assault, shooting at structures and attempted crimes

If you wound someone with a firearm, without legal justification, you have violated a criminal law for which you can be imprisoned or fined. The criminal violation would be attempted murder, aggravated assault, assault or some other offense. A.R.S. §§ 13-1001, 1101, 1104 - 1105, 1201 - 1204.

If you point a firearm at a person, without justification, you have violated a criminal law for which you can be imprisoned or fined. The criminal violation would be attempted murder, aggravated assault, assault, threatening or intimidating, endangerment or some other offense. A.R.S. §§ 13-1201 - 1204, 13-1001 + § 13-1104 - 1105.

If you shoot at certain structures, without justification, you have violated a criminal law that was created, effective July, 1996. A.R.S. § 13-1211.

1. **Endangerment, A.R.S. § 13-1201**

- a. Reckless conduct which
- b. substantially risks imminent death (class 6 felony) or physical injury (class 1 misdemeanor) to another person.

Conduct which might be lawful (like joking and pointing your finger at someone) becomes endangerment if you use a firearm.

[Example: You are celebrating your birthday by making the rounds of your favorite bars.¹ You decide to impress one of your buddies with your new gun, so you pull it from concealment and point it at him, without intending to scare him.]

2. **Threatening and Intimidating, A.R.S. § 13-1202**

- a. Threat or intimidation by word or conduct,
- b. To cause physical injury to another person, or serious damage to another's property; or to cause serious public inconvenience, e.g., evacuation of building; or to cause injury to another person or another person's property in order to promote the interests of a gang or to induce another person to participate in a gang.

While simple words of dissatisfaction or even anger are usually not a crime, those words, coupled with a firearm, can easily constitute illegal threatening.

¹ As discussed later, it is illegal to take a firearm into a bar, except in an emergency.

[Example: You are walking in the mall, when a sleazy looking youth who appears to be a gang member starts taunting you with a string of profanity. You pull your gun and tell him "Go ahead, make my day." The young punk is not frightened, but he turns and walks away.]

3. **Assault, A.R.S. § 13-1203**

- a. Intentionally, knowingly or recklessly,
- b. Causes any physical injury to another person.

[Example: You get into an argument with a stranger and punch the stranger, causing his nose to bleed.]

or

- a. Intentionally,
- b. Places another person in reasonable apprehension of imminent physical injury.

[Example #1: You are walking in the mall, when a sleazy looking youth who appears to be a gang member starts taunting you with a string of profanity. You pull your gun and tell him "Go ahead, make my day." The youth starts crying, and begs you not to kill him.]

or

- a. Knowingly,
- b. Touching,
- c. With intent to injure, insult or provoke.

4. **Aggravated Assault, A.R.S. § 13-1204**

- a. Commit a simple assault,

and

- b. Cause serious bodily injury, or

- c. Use a deadly weapon,² or
- d. Commit the assault after entering home of another with intent to assault, or
- e. Commit by adult (over 18) upon child (15 or under), or
- f. Upon a peace officer performing official duties or person asked by police officer to assist perform official duty, or
- g. Knowingly takes or attempts to exercise control over a police officer's firearm, weapon or implement used to restrain or injure (except handcuffs), or
- h. Upon a teacher or school employee performing official duties, or
- i. By a prisoner upon a confinement officer, or
- j. Upon person bound or restrained, or
- k. Upon a firefighter, fire investigator, fire inspector, paramedic or emergency medical technician performing official duty or a person asked by any of these to assist perform official duty, or
- l. Upon a licensed health care practitioner (MD, DO, Optometrist, Physician's assistant, etc.) performing professional duties, or
- m. Cause temporary but substantial (1) disfigurement, (2) loss or impairment of body organ or part, or cause a fracture of any body part.

Use of a firearm in any dispute can be evidence of intent to cause physical injury to another person, and the likelihood of causing such an injury, accidentally or intentionally, is increased when a firearm is used to settle the dispute. Moreover, the intent, combined with the firearm may create an aggravated assault.

If you display a firearm during a dispute or to an unsuspecting person, that person may reasonably apprehend imminent physical injury. Moreover, reasonable apprehension of injury, combined with the display of a firearm may create an aggravated assault.

If you simply touch someone while displaying a firearm, you

² A pellet gun has been held to be a "firearm" and a "deadly weapon" under A.R.S. §§ 13-105.13, 13-105.17 & 13-1204. *State v. Cordova*, 198 Ariz. 242, 8 P.3d 1156, review denied (App. Div. 2, 2000).

may be evidencing an intent to injure, insult or provoke. Moreover, the touching, combined with the firearm may create an aggravated assault. Having a concealed weapon permit does not give you any additional right to use your firearm and does not give you any protection from an assault charge. If you get into an argument or confrontation while you are carrying a concealed weapon, you should keep it concealed and not display or use it, except under circumstances where the threat or use of deadly force is legally justified.

[Example #1: You get into an argument with a street beggar, decide to teach him a lesson, and slap him beside the head with your gun. Simple assault + deadly weapon = aggravated assault.]

[Example #2: You are in a heated argument that turns into shoving and punching. To make a point, you pull back your coat, revealing your gun. You put your hand on your gun and tell the other person that he had better buzz off or you will end the argument right now. Simple assault + deadly weapon = aggravated assault.]

5. **Shooting at Structures, A.R.S. § 13-1211**

- a. A person who knowingly shoots a gun at a residential structure (movable, permanent or temporary structure [any building, vehicle, railroad car or place with sides and a floor that is separately "securable"] adapted for "both human residence or lodging.") commits a class 2 felony.
- b. A person who knowingly shoots a gun at a nonresidential structure ("building, vehicle, railroad car or place with sides and a floor that is separately securable") "used for lodging, business or transportation" commits a class 3 felony.

[Example #1: A person who knowingly shoots at a house, mobile home, camper's tent (if it has a floor), or other structure designed or adapted for human habitation likely violates subsection A of A.R.S. § 13-1211.]

[Example #2: A person who knowingly shoots at an automobile or nonresidential structure used for "lodging, business or transportation" violates subsection B of A.R.S. § 13-1211.]

[Example #3: A person who shoots at a motel or hotel might be charged under either subsection A or B -- who knows?]

6. **Unlawful Discharge, A.R.S. § 13-3107 ("Shannon's Law")**

- a. Effective in July 18, 2000, a person who, "with criminal negligence," discharges a firearm within or into the limits of any municipality can be charged with a class 6 felony (.5 - 1.5 years & \$150,000 max. fine). A.R.S. § 13-3107.A. "Criminal negligence" means "that a person fails to perceive a substantial and unjustifiable risk" that the firearm discharge is within or into the city or town limits. "The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation." A.R.S. § 13-1105.9(d). Obviously, if a person intentionally and knowingly fires a gun within or into the city or town limits, that person has violated this law. However, Shannon's Law does not require that a person know that he/she is in or near the limits of a city or town. The big question is how this law, which was passed as "Shannon's Law" to penalize "random gunfire," treats people who accidentally discharge a firearm within or into the city or town limits.

If the "dangerous nature" of the firearm discharge is charged by the prosecutor, it is a class 6 felony charge. If "dangerous nature" is not charged, it may be a class 1 misdemeanor. A.R.S. §§ 13-3107.B & 13-702.G. The wording of the statute (A.R.S. § 13-3107), when combined with the cross-referenced statute (A.R.S. § 13-702.G), leads to the logical conclusion that discharge of a firearm within or into the city or town limits in violation of "Shannon's Law" can only be a felony. However, the prosecutors who pushed for this wording insist that prosecutors have discretion to charge as a misdemeanor under the statute by omitting the "dangerous nature" from the charge. Curiously, "Shannon's Law" was intended to punish "random gunfire" with a felony, but "random gunfire" is not mentioned in the law.

"Shannon's Law" does not apply if the firearm is discharged (1) with "justification" (see "Justification" section later in this text), (2) at a legal shooting range (A.R.S. § 13-3107.D.2), (3) in an approved hunting area, (4) for the

control of nuisance wildlife by permit, (5) with a permit from the chief of police of the city or town, (6) by an animal control officer, (7) using blanks, (8) more than one mile from any "occupied structure" (A.R.S. § 13-3101 - building, vehicle, watercraft, aircraft, etc., used for lodging, business, transportation, recreation or storage, including dwelling house, whether occupied, unoccupied or vacant), or (9) in self defense or defense of another from animal attack if reasonably and immediately necessary. A.R.S. § 13-3107.C.

7. Attempted Crimes, A.R.S. § 13-1001 + §§ 13-1104 - 1105

- a. A person intentionally engages in conduct which would constitute a specified crime if the circumstances were as such person believes them to be; or

[Example: You decide that you will end your love affair by killing your lover and make plans accordingly. You pull your gun, pull the trigger, but the gun fails to fire ("misfires"). You have committed attempted first degree murder.]

- b. A person intentionally does or omits to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of a specified crime; or

[Example #1: You decide to kill your cheating partner by ambushing him outside his favorite bar. You get your gun, drive to the bar, and wait for hours, but your cheating partner never shows up. You have committed attempted first degree murder.]

[Example #2: You decide to pickup some needed money the easy way by robbing someone who is withdrawing money from an ATM. You stop an ATM customer, point your gun at him and suddenly decide to pull the trigger. You try to shoot, but the gun misfires, and you fall to your knees, begging forgiveness. You have committed attempted first degree murder and attempted robbery.]

[Example #3: Again, you decide to pickup some needed money the easy way by robbing and killing someone who is withdrawing money from an ATM. You tell your buddy of your plan to rob and kill an ATM customer. You stop an ATM customer, point

your gun at him and change your mind. You fall to your knees, begging forgiveness. Again, you have committed attempted first degree murder and attempted robbery.]

- c. A person tries to help another person to commit murder under circumstances that makes the first person an accomplice if the murder had been committed or attempted by the other person, but the murder is not committed or attempted by the other person.

[Example: Your friend tells you of his plan to kill his boss. He asks if he can borrow your gun to commit the crime. You loan him your gun, but he does not kill his boss. You have committed attempted first degree murder.]

In simple terms, whenever you use or threaten to use a firearm against a person, without legal justification, you are violating a criminal law, and the state can prosecute you. If you have legal justification for your conduct, you are not violating a criminal law, but you might have to go through a trial to establish that your conduct was justified. If you use your firearm against another person, the final decision whether you were justified will be made by other people, such as police, prosecutors, judges and juries. There are no guarantees that others will agree with you that use of a firearm was justified. As you will learn, the critical thing for you to understand is when use of a firearm probably is legally justified and when it probably is not legally justified. A.R.S. §§ 13-401 - 413. In the judgmental shooting portion of this course, you will examine situations where you should not use a firearm, even though you might be legally justified.

C. Ch. 15: Criminal trespass and burglary

- 1. **Criminal trespass** A.R.S. §§ 13-1501 - 13-1505
 - a. **Criminal trespass in the third, second and first degrees, A.R.S. §§ 13-1502, 1503 & 1504**
 - 1) **Entering or remaining on or in land, building, residence or yard,**

which
 - 2) **Is posted prohibiting entry, e.g., posted no entry with a firearm, or**

- 2) After person having lawful control asks person to leave or asks person to check his gun, e.g., someone sees your gun and asks that you leave their property or asks that you check your gun - CHECK YOUR GUN OR LEAVE!

2. **Burglary**, A.R.S. §§ 13-1505 - 13-1508

- a. Entering or remaining unlawfully in a fenced yard, a structure or a residence,
- b. With intent to commit any theft or any felony therein.

Burglary is a class 3 or class 4 felony (depending on whether the structure is a residence), unless the person committing the burglary possesses explosives or a deadly weapon, then the burglary is more serious, i.e., a class 2 or class 3 felony.³

D. Ch. 29: Disorderly conduct and public educational institutions

1. Offenses against public order, A.R.S. §§ 13-2901, *et seq.*

a. **Disorderly conduct, A.R.S. § 13-2904**

- 1) **With the intent** to disturb the peace or quiet of a neighborhood, family or person, or with the knowledge that your conduct has that effect, you do any of the following:
- 2) fight, make unreasonable noise, refuse to obey an order to disperse, etc. or recklessly handle, display or discharge a deadly weapon. A.R.S. § 13-2904.A.6

b. Public educational institutions, A.R.S. § 13-2911

- 1) Governing boards make rules for the maintenance of public order upon all public school property.
- 2) Any deadly weapon or explosive used, displayed or

³ Use or possession of a “firearm” or “deadly weapon” during the commission of a crime is an “aggravating circumstance” that can increase the sentence imposed. A.R.S. §§ 13-702 and 13-710.

possessed by a person in violation of a rule adopted by the governing board, shall be forfeited and sold, destroyed, or otherwise disposed of according to chapter 39, *i.e.*, according to A.R.S. §§ 13-4301 through 13-4315 (these statutes set forth complex rules for forfeiture of property used in a crime).

This Arizona law prohibiting firearms at school contains an exception for approved firearm safety programs⁴ on school campuses. This Arizona law prohibiting firearms at school does not apply to private schools. Private schools can make their own rules about firearms just as any private property owner. But, see discussion later about firearms statutes applicable to public and private schools. A.R.S. § 3102.A.12 (sec. E.2.c & f of this text); federal "Gun Free School Zones Act" (sec. VII.J of this text).

E. Ch. 31: Weapons and explosives

1. Weapons and Explosives, A.R.S. §§ 13-3101, *et seq.*

- a. A firearm is legally classified as a deadly weapon. A.R.S. §§ 13-3101.1 & 13-105.13. It does not matter whether it is loaded or unloaded or temporarily inoperable. A.R.S. §§ 13-3101.4 & 13-105.17; *State v. Young*, 192 Ariz. 303, 965 P.2d 37 (App. Div. 1, 1998).⁵ A pellet gun, although not a firearm

⁴ Effective August 11, 2005, school districts and charter schools are authorized by statute to offer an elective, one-semester firearms safety course. A.R.S. § 15-714.01.

⁵ In the *State v. Young* case, a "prohibited" shotgun was found disassembled and inoperable because the firing pin was too short for the bolt. Whether the shotgun was "temporarily" disabled and still a "weapon" was an issue at trial. In order to make the shotgun work, a City of Phoenix police lab technician had to make a longer firing pin, by cutting a bolt, drilling a hole in it, and gluing a short piece of coat hanger into the hole. The Court ruled that these modifications by the police lab technician supported the conclusion that the shotgun was not "permanently inoperable" and, therefore, qualified as a firearm/deadly weapon. The Court further ruled that Mr. Young could be convicted even though he thought the shotgun was permanently inoperable "junk" and did not

or deadly weapon under A.R.S. §§ 13-3101.1 & 13-3101.4, has been held to be a “firearm” and a “deadly weapon” under A.R.S. § 13-105.13 & 13-105.17. *State v. Cordova*, 198 Ariz. 242, 8 P.3d 1156, review denied (App. Div. 2, 2000).⁶

- b. A prohibited possessor under A.R.S. §§ 13-3101.6, 13-3111 (re. minors) or under 18 U.S.C. § 922(d) may not receive, possess, transport or ship a firearm or ammunition. The federal and state prohibited possessor laws differ slightly.

A.R.S. §§ 13-3101.6, 13-3102.4, 13-3111:

- 1) Person found to constitute a danger to himself or to another pursuant to court order and whose court ordered treatment has not been terminated by court order; or
- 2) Convicted felon (whose civil rights have not been restored); or
- 3) Adjudicated delinquent (whose civil rights have not been restored); or
- 4) Prison inmates, and certain parolees and probationers; or

have the tools or knowhow to repair it.

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⁶ The effect of the *Cordova* case is that for purposes of criminal charges outside of Chapter 31, a pellet gun is a “firearm” and “deadly weapon”, but for purposes of criminal charges within Chapter 31, a pellet gun is not a “firearm” or “deadly weapon.”

- 5) On probation,¹ parole, home arrest, work furlough, etc.; or
- 6) Minor (under age 18), except under defined circumstances, e.g., lawful hunting, shooting events, under specified adult supervision, etc.

18 U.S.C. § 922(d):

- 1) a person under indictment for or convicted of a crime which carries a sentence of more than one year (except state misdemeanors, but see # "9" below); or
- 2) a fugitive from justice; or
- 3) an unlawful user of controlled substances (drugs); or
- 4) a person who has been adjudicated mentally defective or has been committed to a mental institution; or
- 5) an illegal alien; or
- 6) a person who has been dishonorably discharged from the Armed Forces; or
- 7) a person who has renounced his/her U.S. citizenship; or
- 8) one who is subject to certain court issued restraining orders; or
- 9) one who has been convicted of misdemeanor "domestic violence" crime (such a person also may not possess a firearm or ammunition)

2. Misconduct with firearms, A.R.S. § 13-3102

- a. Carrying firearm concealed on person without a permit, A.R.S. §§ 13-3102.A.1 & 13-3102.F.

Carrying "concealed" means carrying a weapon on your person in such a manner that "it is hidden from the 'ordinary observation' or the 'ordinary sight' of another person." *State v. Adams*, 189 Ariz. 235, 941 P.2d 908 (App. 1997). Unless you have a CCW permit or your are exempted from the permit requirement, you may not carry a firearm concealed. In the statute, there are

¹ Pursuant to a conviction for domestic violence or a felony conviction. A.R.S. §13-3101.6(d), effective July 18, 2000.

two exceptions to this general rule. (1) There are **places** where you may carry your weapon concealed (§ 13-3102.B) - your dwelling, your business premises, or your real property (leased or owned); and (2) There are **weapons containers** (§ 13-3102.F) that you can use to carry your firearm so long as the container is wholly or partially visible and the container "utilized to carry the weapon reasonably would place others on notice that such person is **armed**." See *State v. Moerman*, 182 Ariz. 255, 895 P.2d 1018 (Dec. 13, 1994), Rev. Denied (1995), *infra*.

A.R.S. § 13-3102.F allows a person to carry a firearm without a CCW permit "in a belt holster which holster is wholly or partially visible, or carried in a scabbard or case designed for carrying weapons which scabbard or case is wholly or partially visible or carried in luggage." Notwithstanding the wording of this statute, the Arizona Court of Appeals has ruled that guns may not be carried in devices that conceal the gun from "ordinary" view, e.g., in "fanny packs," without a CCW permit, (1) if the gun is readily accessible and (2) if the container does not reasonably place others on notice that the person is armed. The highest court to rule on the fanny pack issue was Division 1 of the Arizona Court of Appeals in a split decision, *State v. Moerman*, 182 Ariz. 255, 895 P.2d 1018 (Dec. 13, 1994), Rev. Denied (1995). By a 2-1 vote, that court ruled that carrying a gun in a fanny pack is illegal without a CCW permit, i.e., it constitutes concealed carry. In May, 1995, the Arizona Supreme Court refused to review that decision. The following language by Judge Voss is taken from that case:

"We believe that the legislature intended to prohibit a person from carrying a concealed weapon [without a permit] on his or her person in a manner readily accessible for immediate use unless the conveyance utilized to carry the weapon reasonably would place others on notice that such person is armed."

More recently, the Court of Appeals defined "concealed" by relying upon the legislative "intent" that Judge Voss found in the *Moerman* case and by referring to cases from other states:

" . . . Most courts hold that a weapon is concealed if it is hidden from the 'ordinary observation' or the 'ordinary sight' of another person. . . . [T]he standard of 'ordinary observation,' when applied with common sense, will serve to determine whether a

weapon is concealed.” *State v. Adams, supra*.

The *Moerman* and *Adams* cases actually concerned A.R.S. § 13-3102(A)(2) (transporting firearms in vehicles), but their reasoning will undoubtedly be applied to A.R.S. § 13-3102(A)(1) (“carrying” concealed). *Moerman* and *Adams* seem to require that, unless a person has a CCW permit, a person cannot use any case, pack, gun case, range bag, etc. that conceals a gun “readily accessible for immediate use” from view, unless the case, pack, etc. is labeled to “reasonably . . . place others on notice that such person is armed.” Carried to its logical extreme, this court decision might require a gun case containing a gun to be boldly labeled “FIREARM” or to be locked to satisfy Judge Voss’ definition of a case in which a firearm may be carried without a concealed carry permit. Such a labeling process would encourage thefts of firearms from autos, etc. and would be contrary to federal statutes concerning transporting firearms on aircraft in unmarked cases.² Requiring that all such cases be locked (so that the gun is not “readily accessible”), unless the person using it has a CCW permit, is tantamount to rewriting the plain language of A.R.S. §§ 13-3102(A)(1) & (2) and 13-3102.F. Nonetheless, that is the current law in Arizona.

In *State v. McDermott*, (1 CA-CR 03-0683, July 8, 2004), the Court of Appeals declared that carrying a gun in a fanny pack in a car without a CCW permit did not constitute permissible carry in “luggage” under A.R.S. §13-3102.A.2. *McDermott* cited *Moerman* to mean that a fanny pack did not qualify as a “case” for “carrying” a gun under A.R.S. §13-3102.A.1 (ignoring that *Moerman* was carrying a gun in his car under §13-3102.A.2). Then, *McDermott* ruled that a fanny pack did not qualify as “luggage” for purposes of “carrying” a gun in a means of transportation (A.R.S. §13-3102.A.2).

- b. Carrying firearm concealed and within immediate control in or on a means of transportation without a permit, A.R.S. §§

² “. . . No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.” 18 U.S.C. §922(e), as amended in Pub.L. 103-159, § 302(a) in 1993.

13-3102.A.2 & 13-3102.F.

Unless you have a CCW permit, it is unlawful to carry a deadly weapon concealed within your immediate control in or on a means of transportation (A.R.S. § 13-3102.A.2).

When transporting a firearm in or on a means of transportation without a CCW permit, the firearm must be wholly or partially visible, or in a case, holster, scabbard, pack or luggage, or within a storage compartment, trunk or glove compartment (A.R.S. § 13-3102.F). In view of the *Moerman*, *Adams* and *McDermott* cases discussed above, if a gun is “readily accessible” and not readily observable while in its case, holster, scabbard, pack or luggage, then the case, etc. would have to be open to view and boldly labeled or otherwise put persons on notice that it contains a gun. It must be emphasized that if one occupant of a vehicle has a concealed-weapon permit, that concealed-weapon permit does not protect another occupant of the vehicle from being charged with carrying or transporting a concealed weapon within that person’s immediate control. A.R.S. § 13-3102.A.2 and 13-3102.F.

A person can avoid the problems and pitfalls of carrying and transporting firearms in Arizona by possessing an Arizona CCW permit whenever carrying or transporting a firearm, concealed or otherwise, in Arizona. Remember that anyone carrying a concealed weapon in Arizona is obligated also to have a CCW permit. Anyone carrying a concealed weapon in Arizona is obligated to show a valid CCW permit to law enforcement officers upon request.

If a person does not have a CCW permit when carrying concealed, that person can be charged for illegally carrying a weapon concealed (A.R.S. § 13-3102.A.1 or § 13-3102.A.2)³ and (if that person is a CCW permittee) illegally failing to present a CCW permit (A.R.S. § 13-3112.D), the CCW permit can be suspended, and the weapon can be seized. In such a circumstance, the CCW permittee can get the CCW permit restored by taking it to the law

³ Upon subsequent presentation of your permit to the appropriate judge or law enforcement agency, the charge of illegally carrying your weapon concealed would probably be dismissed.

enforcement agency that charged the permittee or to the court (A.R.S. § 13-3112.B). The law does not state that a charge of carrying a concealed weapon without carrying a CCW permit and/or failure to present the CCW permit will be dismissed upon subsequent presentation of the CCW permit, but common sense supports such a dismissal. If the charge is dismissed, the weapon should be returned to its owner (A.R.S. § 13-3105 permits the court to order forfeiture of the weapon only upon **conviction** for carrying or transporting a concealed weapon without a permit, or using the weapon in the commission of certain felonies, or upon being **adjudged incompetent** after committing an offense in which the weapon is used, displayed or unlawfully possessed).

Carrying a deadly weapon concealed on one's person or in or on a means of transportation without a permit is a class 1 misdemeanor. While many people question the legality of such a statute in view of the Arizona Constitution's guarantee of the right to bear arms, the Arizona court's have upheld this statute as constitutional in *Dano v. Collins*, 166 Ariz. 322, 803 P.2d 1021 (App. 1990), rev. granted, rev. dismissed, 167 Ariz. 535, 809 P.2d 960. Therefore, the only legally secure way to carry a concealed weapon in Arizona is with a CCW permit.

- c. Other "misconduct with weapons," A.R.S. § 12-3102.A.3 - A.R.S. § 12-3102.A.14

Misconduct with weapons also prohibits: manufacturing, possessing, transporting, selling or transferring a prohibited weapon;⁴ possession of a deadly weapon by a prohibited possessor; selling or transferring a deadly weapon to a prohibited possessor; defacing a deadly weapon; knowingly possessing a defaced deadly weapon;⁵ using or possessing a deadly weapon when committing a felony under chapter 34; discharging a firearm at an occupied structure in aid of a criminal street gang, criminal syndicate or a racketeering enterprise; **entering a public establishment or public event with a deadly weapon after being**

⁴ See A.R.S. § 13-3102.C, D & E for exceptions to this law.

⁵ See A.R.S. § 13-3102.C & D for exceptions to this law.

asked to check in the weapon;⁶ entering an election polling place with a deadly weapon on election day;⁷ possessing a deadly weapon on school grounds;⁸ carrying a deadly weapon into a nuclear or hydroelectric generating station;⁹ supplying a firearm to someone for use in the commission of a felony; or using a firearm in the furtherance of terrorism.

d. **Qualifications for CCW permit, A.R.S. § 13-3112**

1) **Resident** of Arizona **or** a **U.S. Citizen**,¹⁰ - Source:

⁶ See A.R.S. § 13-3102.C & G for exceptions to this law.

⁷ See A.R.S. § 13-3102.C for exceptions to this law.

⁸ See A.R.S. § 13-3102.C for exceptions to this law. In addition, A.R.S. § 13-3102.I allows unloaded firearms to be carried on school grounds within a vehicle under the control of an adult provided that, if the adult leaves the vehicle, the firearm shall not be visible from the outside and the vehicle shall be locked, or any firearm for use in a program approved by a school. See DPS webpage discussing firearms in school zones - <http://www.dps.state.az.us/ccw/schoolzone.htm>. This page is meant to serve as a guide for basic information, as the issue involving firearms in school zones is complex. Specific questions on this topic should be directed to your attorney, local prosecutor or federal district attorney.

⁹ See A.R.S. § 13-3102.C for exceptions to this law. Changes to 13-3102 occurred in August 2002 to include adding hydroelectric generating stations to restricted possession locations (13-3102.A.13), increasing the penalty for 13-3102.A.13 to a class 4 felony, and adding a new sub-section addressing the use of deadly weapons in the furtherance of terrorism (13-3102.A.15).

¹⁰ DPS defines resident to mean any of the following:

- (1) A person who has lived in Arizona for six months immediately before the date of application for a concealed weapon permit, or
- (2) A person who remains in Arizona for a total of six months or more during each calendar year, or
- (3) A member of the armed forces who has been stationed in Arizona for the 30 days immediately before the date of application for a concealed weapon permit.

NOTE: Effective on or about August 20, 1998, the requirement for Arizona residency was changed to Arizona residency **OR** U.S. Citizenship. (H.B. 2041, signed 5-20-98, effective date 8-20-98).

February 1996 DPS "Concealed Weapon Permit News;" Arizona Administrative Code, R13-9-101.14

- 2) **Twenty-one years of age or older**
- 3) Not under indictment and not convicted of any felony or a misdemeanor crime of domestic violence,
- 4) Not suffering from mental illness and not adjudicated mentally incompetent or committed to a mental institution,
- 5) Not unlawfully present in U.S.,
- 6) **Has completed DPS approved firearms safety training** program; or is an active duty Arizona peace officer standards and training board certified or federally credentialed peace officer or an active duty county detention officer who has been weapons certified by the officer's employing agency; or is an honorably retired federal, state or local peace officer with ten years or more of service,¹¹
- 7) **Has completed DPS application form, with fingerprints,** and
- 8) Has paid DPS fee (currently \$65.00).

DPS has up to 60 days to complete background check, and 15 working days after completion of background check to issue or deny permit, valid for five years.

- e. **Qualifications for renewal of CCW permit**, A.R.S. § 13-3112.L & M; *Arizona Administrative Code*, R13-9-108
 - 1) Complete **two-hour refresher firearms safety training** approved by DPS (certificate of completion is valid for 6 months) (two hours effective August 11, 2005);
 - 2) Submit **renewal application to DPS with required fee no sooner than 90 days prior to CCW permit expiration date and no later than 60 days after CCW permit expiration date;** and
 - 3) Satisfactorily complete **criminal history check**

¹¹ Although not an Arizona CCW permit, retired police officers can obtain "certificates of firearms proficiency" that qualify them under federal law to carry concealed. 18 U.S.C. § 926.C; A.R.S. § 13-3112.X.

(performed by DPS after receipt of application - see "prohibited possessor," *supra.*);

- f. **A CCW permit does not affect laws against** manufacturing; possessing; transporting, selling or transferring a prohibited weapon ;¹² selling or transferring to a prohibited possessor; defacing a firearm (*i.e.*, obliterating the serial number); possessing a firearm during the commission of a crime; unlawfully discharging a firearm; or carrying the firearm into a prohibited place or into a place where the owner prohibits entry with a firearm; polling places (on the day of election); places that serve alcohol (A.R.S. §§ 4-101.24 & 4-244.30); on school grounds; into nuclear generating station; National Parks; State Parks (if posted); or anywhere else where validly posted no firearms. **A CONCEALED-WEAPON PERMIT DOES NOT AUTHORIZE THE CARRYING OF A FIREARM WHERE FIREARMS ARE LAWFULLY PROHIBITED!**

Some people argue that CCW permittees can carry their guns in places where others cannot (*e.g.*, school grounds, public events and public establishments where no firearms are allowed). This argument is based on A.R.S. § 13-3102.C.4, which says that prohibitions against carrying weapons in such places does not apply to those persons who are "licensed, authorized or permitted pursuant to a statute of this state" Law enforcement does not accept this argument! Since § 13-3102.C.4 was enacted **prior to the CCW statute** (A.R.S. § 13-3112), it could not have contemplated CCW permits. However, the legislature has refused to pass legislation to clarify A.R.S. § 13-3102.C.4 since passage of the CCW statute.

Some lower courts have accepted the argument that § 13-3102.4 grants special rights to CCW permittees. The appellate courts have not ruled on this argument, but the

¹² "Knowing possession" of certain "prohibited" firearms is illegal under A.R.S. §13-3101 (*e.g.*, "saw-off" shotgun with barrel less than 18 inches in length). One need not know that a weapon is "prohibited" to be charged with "knowingly" possessing a "prohibited" weapon. One only need know that he "possesses" the weapon. *State v. Young*, 192 Ariz. 303, 965 P.2d 37 (App. Div. 1, 1998).

Courts of Appeals have construed Arizona's firearms statutes narrowly to restrict the right to carry a firearm. Therefore, it is uncertain whether a CCW permit allows you to carry a gun into these otherwise prohibited places.

An Arizona CCW permittee is exempted from the "Brady" background check (18 U.S.C. § 922(s)(1)(C) and A.R.S. § 13-3114).

3. State Preemption, A.R.S. § 13-3108(A)

Until the summer of 2000, A.R.S. § 13-3108(A), entitled "Firearms regulated by state; state preemption," stated that "Ordinances of any political subdivision of this state relating to the transportation, possession, carrying, sale and use of firearms in this state shall not be in conflict with this chapter." In *City of Tucson v. Rineer*, 193 Ariz. 160, 971 P.2d 207 (App. 1998), review denied, Division Two of the Court of Appeals ruled that since the legislature had not made it clear that this was a preemption statute (a curious conclusion in view of the title and wording of the statute), cities, counties and towns could prohibit firearms in city parks or elsewhere. The Court said that local ordinances regulating firearms "may parallel or even go beyond" state statutes, so long as they do not conflict on the "same topic." In the words of the Court, "Indeed, some [out-of-state] courts arguably have gone well beyond the particularized restriction we uphold here."

In response, the legislature adopted and the Governor signed a new preemption statute in April, 2000, which is effective July 18, 2000. A.R.S. § 13-3108(A) now provides that "Except as provided in subsection C of this section, a political subdivision of this state shall not enact any ordinance, rule or tax relating to the transportation, possession, carrying, sale or use of firearms or ammunition or any firearm or ammunition components in this state." Subsection B bars political subdivisions from requiring the licensing or registration of firearms or ammunition or their components and from prohibiting the ownership, purchase, sale or transfer of firearms or ammunition or their components.

Subsection C of A.R.S. § 13-3108 permits political subdivisions to

enacts rules, ordinances, etc. “pursuant to state law, . . . or relating to any of the following:” (1) sales taxes like those applied to other goods, (2) land use, such as zoning, like that applied to other commercial businesses, (3) regulating their own employees and contractors on the job, (4) prohibiting the open carry of firearms in parks,¹³ (5) when using trails, paths or roadways to go directly to or from an area where possession of firearms is not limited and there is no reasonable alternative access. (6) prohibiting a minor (less than 18 years old) from possessing or transporting a firearm,¹⁴ (7)

¹³ A.R.S. § 13-3108.C.5 requires local governments that prohibit open carry of firearms in parks of one square mile or less to conspicuously post the parks as follows: “Carrying a firearm in this park is limited to persons who possess a permit issued pursuant to section 13-3112.” In parks or preserves that are more than one square mile in area, local governments may designate only the developed or improved areas as areas where open carry of firearms is prohibited by conspicuously posting those areas as follows: “Carrying a firearm in this developed or improved area is limited to persons with a permit issued pursuant to section 13-3112.” Developed or improved areas are limited to areas developed for public recreation or family activity, including picnic areas, concessions, playgrounds, amphitheaters, racquet courts, swimming areas, golf course, zoos, horseback riding facilities and boat landing and docking facilities. Developed or improved areas do not include campgrounds, trails, paths or roadways, except those trails, paths or roadways adjacent to designated developed areas.

Political subdivisions may not prohibit a person from firearms possession in parks or reserves

(1) when the person is engaged in a permitted firearms or hunters safety course conducted by a certified instructor;

(2) when the person is at a shooting range (A.R.S. § 13-3107), shooting event, permitted firearms show or permitted hunting area;

(3) when the person is legally transporting, carrying, etc. a firearm in a vehicle;

(4) when going directly to or from hunting, marksmanship practice or recreational shooting;

(5) when traversing a trailhead area to gain access to areas where possession of firearms is not limited;

¹⁴However, political subdivisions may not prohibit minors from possessing guns

(1) when accompanied by a parent, grandparent or guardian or certified hunter safety instructor or certified firearms safety instructor acting with the consent of the minor’s parent, grandparent or guardian;

(2) when on private property owned or leased by the minor or the minor’s parent, grandparent or guardian; or

(3) when the minor is fourteen to seventeen years old and engaged in

limiting or prohibiting the discharge of firearms in parks and preserves.¹⁵

A violation of a local ordinance or rule enacted under A.R.S. § 13-3108.C is a class 2 misdemeanor, unless the political subdivision designates a lesser misdemeanor by ordinance.

4. Juveniles & guns

- a. "Transfers" to juveniles, A.R.S. § 13-3109 ; 18 U.S.C. §922(x)

It is a class 6 felony under Arizona law to sell or give to a minor (under 18 years old), without written consent of the minor's parent or legal guardian, a firearm or ammunition.

A.R.S. § 13-3109. There is a "temporary transfer" exception for firearms instruction/safety courses, hunting safety courses, shooting competitions, hunting and target shooting with consent of parent or guardian.

It is a federal crime to sell or give a juvenile (under 18 years old) a handgun or handgun ammunition. 18 U.S.C. §922(x). There are exceptions for temporary transfers, ownership without possession, etc. Temporary transfers for training, sport shooting, hunting, etc. require written consent by a parent. Written consent by the parent is even required when the parent is present with the juvenile for the hunting, training, etc. Violations are punishable by fines and imprisonment up to one year, or under certain

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- (a) lawful hunting or shooting events or marksmanship practice at established ranges or where shooting is legal,
 - (b) transporting an unloaded gun for the purpose of hunting,
 - (c) transporting an unloaded gun between the hours of 5:00 a.m. and 10:00 p.m. for purposes shooting events or marksmanship practice at established ranges or where shooting is legal,
 - (d) any activity relating to production of crops, livestock, poultry, livestock or poultry products, ratites (ostrich, etc.) or storage of agricultural commodities.

¹⁵ It is permissible to discharge a firearm in a park or preserve (1) with "justification," as explained in the justification section of this text; (2) at shooting ranges (A.R.S. § 13-1307), (3) in designated hunting areas; (4) to control nuisance wildlife with the appropriate permit; (5) by special permit from the chief law enforcement official of the political subdivision where the park is located; (6) as required by an animal control officer; and (7) "in self defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person."

circumstances, up to ten years. 18 U.S.C. § 924(a)(6).

- b. “Possession” by juveniles, A.R.S. § 13-3111, 18 U.S.C. § 922(x)

In counties with populations of more than 500,000 (Maricopa and Pima), A.R.S. § 13-3111 prohibits a minor from possessing firearms unaccompanied by a parent, grandparent or guardian, or certified instructor acting with the consent of a parent or guardian, except on private property not open to public or private property owned by minor or the minor’s family or guardian. There are exceptions to this prohibition for minors ages 14 to 17 years engaged in lawful hunting or shooting events at established ranges or other areas where the discharge of a firearm is not prohibited, transporting unloaded firearms for hunting, transporting unloaded firearms to shooting ranges or areas between 5:00 a.m. and 10:00 p.m. (A minor less than 14 years of age is not criminally responsible in the absence of clear proof that the minor knew the conduct was wrong. A.R.S. § 13-501.) Firearms possessed by minors in violation of this law are required to be seized by a peace officer who discovers the violation and will be forfeited upon adjudication of a violation of this law, unless the identity of the lawful owner of the firearm is known, then it must be returned to the lawful owner. In addition, the minor's driver's license can be revoked or its issuance can be delayed until the minor is 18, plus a fine of \$250 (possession unloaded firearm not in motor vehicle) to \$500 (possession loaded firearm or any firearm in motor vehicle). Parents or guardians are jointly and severally liable for the minor's fines and liable for any civil actual damages resulting from unlawful use of the firearm by the minor, IF the adult knew or reasonably should have known of the minor's unlawful conduct and made no effort to prohibit it.

In December, 1999, Division Two of the Arizona Court of Appeals declared A.R.S. § 13-3111 to be an unconstitutional “special law,” but the statute remains in the printed laws. *In Re Cesar R.*, 197 Ariz. 437, 4 P.3d 980 (Ct. App. 1999), *review denied*.

Effective July 18, 2000, juveniles are also subject to local firearms laws enacted by political subdivisions of the state pursuant to A.R.S. § 13-3108.C. See the discussion in the earlier section entitled “State Preemption.”

Juveniles under 18 years of age are prohibited by federal law from possessing handguns or handgun

ammunition, but may possess long guns. 18 U.S.C. § 922(x). There are exceptions that permit juveniles to possess handguns for certain sport shooting activities, ranching, ownership without possession, etc. Under most circumstances, the written consent of the juvenile's parent or guardian is required, even if the juvenile is accompanied by the parent or guardian. A juvenile is permitted under federal law to use a handgun at the place of residence in self-defense or defense of another without written permission. Violations are punishable by fines and imprisonment by up to one year. 18 U.S.C. § 924(a)(6).

Federally licensed gun dealers are prohibited from transferring handguns to persons under 21 years of age. 18 U.S.C. § 922(b). However, Federally licensed gun dealers are prohibited from transferring long guns to juveniles under 18 years of age. *Id.*

Thus, federal law permits a person 18 to 21 years old to own or possess a handgun or long gun and permits a person less than 18 years old to possess a long gun, but a person has to be at least 21 years old to purchase a handgun from a federally licensed dealer and at least 18 years old to purchase a long gun from a federally licensed dealer.

5. Misconduct with body armor, A.R.S. § 13-3116

Enacted in 1999, this Arizona statute creates a separate class 4 felony for anyone who knowingly wears or otherwise uses body armor during the commission of any felony.

6. Remote Stun guns, A.R.S. § 13-3117

Enacted in 2005, this Arizona statute creates a separate class 4 felony for anyone who knowingly uses or threatens to use a stun gun against a law enforcement officer who is engaged in the performance of his/her official duties.¹

F. Ch. 5: Responsibility

1. Insanity - A person who commits a criminal offense “may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such

¹ Use of a “Permitted Remote Stun Gun” or a “Remote Stun Gun” during the commission of a crime is an “aggravating circumstance” that can increase the sentence imposed. A.R.S. §§ 13-702 and 13-710.

severity that person did not know the criminal act was wrong.” A person found guilty but insane may be committed by the court for a period of time equal to the prison confinement the person would have faced if found guilty of the offense. The defendant has the burden of proving the insanity defense by clear and convincing evidence. A.R.S. § 13-502.

2. Underage - A juvenile less than 14 years old at the time the juvenile commits a crime cannot be charged as an adult, unless the juvenile has a “historical prior felony conviction” (as defined in A.R.S. § 13-604, which includes a felony “involving the use or exhibition of a deadly weapon” - § 13-604.U.1(iii)). A.R.S. § 13-501.C. A juvenile who is at least 15 years old, may be charged as an adult for commission of a class 1 or 2 felony, or for commission of certain class 3, 4, 5 or 6 felonies (including those that involved the “use or threatening exhibition of a deadly weapon”). A.R.S. § 13-501.B. A Juvenile fifteen, sixteen or seventeen years old must be charged as an adult if the juvenile commits first or second degree murder, forcible sexual assault, armed robbery, aggravated DUI, any other violent felony, or if the juvenile commits a felony and is a “chronic felony offender” (as defined in A.R.S. § 13-501.D, which includes at least two prior felonies for which the juvenile has been adjudicated a delinquent). A.R.S. §13-501.A.

IV. **CIVIL LAWS IMPACTING ON USE OF FIREARMS**

A. Explanation of sources of civil law , i.e., court made law (common law) and statutory law

There are two sources of civil laws: (1) the rules that have evolved over the centuries as a result of "reported" or "published" court decisions, *i.e.*, "common law," and (2) rules that have been passed by the legislature, *i.e.*, statutes or printed laws.

Common law consists of the cases that have been put into the law books. Newspaper and magazine accounts of trials do not count. They are not precedents until they have been printed in law books known as “reporters.” Over many years, the common law has developed rules, which if violated, may give someone the right to sue the violator.

In Arizona and the United States, most of the **civil laws** are not written into statutes. They are legal principles that come from hundreds of years of court decisions. These principles are continually being changed by more court decisions and legislation. All the publicity about "tort reform" concerns lobbying efforts to pass legislation to change certain common law rules that have been developed by the courts.

Under civil law, if a person kills, wounds, strikes or threatens someone with a firearm under circumstances where that person has violated a legal "duty" owed to the victim, that person can be sued by the victim (if alive), the victim's estate (if the victim is dead) or certain persons related to the victim for wrongful death, loss of consortium (e.g., loss of love, affection, sexual ability), funeral expenses, medical expenses, loss of income and other civil remedies and damages, including punitive damages.² In Arizona, the same legal "justifications" are defenses to civil lawsuits and criminal charges. A.R.S. § 13-413. A legal "duty" can be created by statute, contract, or circumstances where the law imposes a duty on someone. For example, there is no duty to avoid harming or killing an assailant who is attacking with a deadly weapon, but there is a duty to avoid harming or killing another person who might become the victim of a stray bullet fired at the assailant.

If a person brandishes a firearm in a manner which causes someone (the victim) reasonably to fear death or injury in violation of a duty owed to the victim, the violator can be sued by the victim for assault, mental distress and other civil remedies and damages. Justification is a defense. A.R.S. § 13-413.

One cannot be held liable for a civil wrong (tort) in Arizona if the conduct was justified under the law. (A.R.S. § 13-413). However, being found legally justified in a criminal case does not protect against a civil suit. *Pfeil v. Smith*, 183 Ariz. 63, 900 P.2d 12 (App. 1995). The differences between civil and criminal cases will be explored later in this treatise.

Now, let's look at some examples of civil laws that affect carrying of a firearm, concealed or openly.

1. Intentional acts - assault, false arrest and false imprisonment

² A.R.S. §§ 12-611 through 613 set forth statutory rules for wrongful death actions:

Wrongful death statute - preserves liability beyond death of victim - purely statutory remedy.

Parties plaintiff - surviving spouse, child, parent or personal representative on behalf of estate of deceased, with damages distributed to parties in proportion to their damages or as asset of estate.

Measure of damages = fair and just with reference to the injury resulting from the death to the surviving parties, and also having regard to the mitigating or aggravating circumstances attending the wrongful act, neglect or default. . . not subject to the debts or liabilities of the deceased, unless the action is brought on behalf of the estate.

- a. Intentional torts : These are acts which are done intentionally, rather than accidentally. Intentionally shooting or striking a person without justification is an intentional tort.
 - 1) **Battery** is an offensive or harmful touching of another in violation of a duty owed to that person. Generally, everyone has a duty to everyone else to avoid such an offensive touching. However, a battery can be committed without personally touching the other person. If a person puts into force or action the means by which the offensive or harmful touching occurs, that person has committed a battery. For example, if a person intentionally shoots a victim without justification, that person has committed a battery despite having not directly touched or contacted the victim. The victim can sue that person for the resulting damages.
 - 2) **Assault** is a threatened harmful or offensive contact. Think of it as a threatened battery without the need for actual contact. Intentionally pointing a firearm at a victim without justification is an assault. The victim can sue the person who pointed the firearm for assault and recover the resulting damages for fright, mental duress, etc.
 - 3) False arrest or false imprisonment occurs when a person restrains someone's freedom without legal right or justification. For example, if a person points a firearm at the victim and restrains the victim's freedom, without justification, the victim can sue that person for false imprisonment. There need not have been an actual arrest or imprisonment in order to trigger the right to sue. Use of a firearm to restrain the person's freedom without justification is likely a false arrest or false imprisonment, and the victim can sue for damages, including mental anguish, etc.

2. **Negligence - accidental discharge, accidental shooting**

- a. **Negligence** is a tort best known as an "**accident**." In other words, a person who did not intentionally harm the victim or the victim's property, but accidentally harmed the victim or the victim's property in violation of a duty to the victim has

probably acted negligently. Careless or improper use of firearms can easily lead to being sued for negligence.

- 1) **Accidental discharge of firearm** can easily lead to being sued for negligence. Obviously, if a person accidentally shoots a firearm and strikes a victim or the victim's property, damage will likely result. The victim can sue that person for negligence. Although justification is a theoretical defense, it is hard to imagine a circumstance where a person would be justified to be careless with a firearm. An example of an accidental shooting that resulted in a civil lawsuit is *Mack v. Barney*, 124 Ariz. 5, 606 P.2d 823 (Ariz. App. 1980). The *Mack* case involved a hunting accident in which the defendant slipped and fell and his rifle discharged, causing plaintiff (victim) to be shot in both ankles.
- 2) **Accidental shooting of a person, animal or property** can also result when a person intentionally shoots a firearm in the mistaken belief that the bullet will not strike any person, animal or property. Signs warning against shooting a firearm within 1/4 mile of an occupied structure are intended to guard against the negligent injury or damage that can result from such conduct. **Shooting a firearm blindly through bushes or trees without justification and hitting someone or someone's animal or property can result in being sued for negligence and the resulting damages.**
- 3) **Shooting at a criminal, even with legal justification (A.R.S. § 13-401), and hitting a bystander** may constitute negligence. The bystander is owed a general duty of care to avoid injury. The bystander might sue for negligence and battery.

V. "JUSTIFICATION" FOR USE OF DEADLY FORCE - THE KEY TO KNOWING WHEN A FIREARM CAN BE USED AGAINST ANOTHER PERSON

Up to now, the focus has been on the laws that prohibit using a firearm. Now, the focus will shift to the **circumstances under which the law "justifies" use of deadly force**. This is a critical part of the legal studies in this course. There are no stupid questions! Anyone with questions should ASK THE INSTRUCTOR!

IMPORTANT NOTICE: In each of the justification examples, where the law justifies the use of deadly force, there is an important exception. Even though the law might justify use of physical or deadly force against one person, that force may not be used recklessly to injure an innocent bystander. There is no justification for the reckless injury or killing of an innocent bystander. (A.R.S. § 13-401). In addition, negligently injuring or killing an innocent bystander can lead to a civil negligence lawsuit.

IMPORTANT NOTICE: In each of the justification examples, the law requires the defendant to raise the justification defense. In a civil or criminal case, the defendant must prove justification by a "preponderance of the evidence," and the judge or jury is free to decide whether the defendant's conduct was justified based on the "preponderance of the evidence." The adoption of this civil standard of proof as an "affirmative defense" in criminal cases occurred in 1997. A.R.S. §§ 13-103 and 13-205. (The defendant's burden to prove justification was ruled constitutional in *State v. Casey*, 205 Ariz. 359, 71 P.3d 351 (2003); *State v. Farley*, 199 Ariz. 542, 19 P.3d 1258, review denied (App. Div. 1, 2001); *State v. Jeffrey, et al.*, 203 Ariz. 111, 50 P.3d 861 (App. Div. 2, 2002). This new burden of proof was later ruled to have created a "disappearing" reasonableness presumption for crime prevention justification, A.R.S. § 13-411(C). *State v. Martinez*, 202 Ariz. 507, 47 P.3d 1145 (App. Div. 1, 2002), review denied. It is important to understand that one must prove justification affirmatively. The defendant can face a criminal trial, be acquitted based on justification, and still face a civil trial to decide again whether he was justified.

There is no duty to retreat before acting with justification, i.e., Arizona is a "stand your ground" jurisdiction. *State v. Jackson*, 94 Ariz. 117, 382 P.2d 229 (1963); *Macias v. State*, 36 Ariz. 140, 238 P. 711 (1929); A.R.S. § 13-411.

THE POLICE HAVE NO DUTY TO PROTECT YOU. Any discussion of justification triggers consideration of alternatives to self-defense. A common misunderstanding is that law enforcement officers have a duty to protect you, if possible. This is not true. Courts have held that neither the state nor the police owe a duty to protect the individual. Some of the more recent court decisions include: *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989); *Hernandez v. City of Goshen*, U.S.C.A. 7th Cir. Mar. 31, 2003; *Zelig v. County of Los Angeles*, 27 Cal.4th 1112, 119 Cal.Rptr.2d 709, 45 P.3d 1171 (2002); *Ashburn v. Anne Arundel County*, 306 Md. 617, 510 A.2d 1078 (1986); *Everton v. Willard*, 468 So.2d 936 (Fla. 1985); *Fox v. Custis*, 712 F.2d 84 (4th Cir. 1983); *Weiner v. Metro Transportation Authority*, 55 N.Y.2d 175, 448 N.Y.S.2d 141 (1982); *Warren v. District of Columbia*, 444 A.2d 1 (D.C. 1981). One federal court even boldly proclaimed that "there is no constitutional right to be protected by the state against being murdered by criminals or madmen." *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982).

A. Justification - A.R.S. §§ 13-404 & 13-405

1. **Self-defense (A.R.S. §§ 13-404 & 13-405)**

Self-defense is the most critically important part of CCW training on the lawful use of deadly force! Self-defense, by far, is the most likely reason for the justified use of a firearm against another human being. Several scenarios will be reviewed as part of your judgmental shooting training.

- a. You would be justified in threatening or using **physical force** against another person when and to the extent a reasonable person in your position would believe that physical force is immediately necessary to protect yourself against the other person's use or attempted use of **unlawful physical force**. (A.R.S. § 13-404) . You would be justified in using **deadly physical force** when a reasonable person in your position would believe that deadly physical force is immediately necessary to protect yourself against the other person's use or attempted use of **unlawful deadly physical force**. (A.R.S. § 13-405).

It is important that you understand that the law permits a *measured* self-defense. Generally, you can only use the force necessary to resist the unlawful force. You can **resist unlawful physical force with physical force**. You can **resist unlawful deadly force with deadly force**.

You cannot use physical force in response to mere words, no matter how offensive. Similarly, **YOU CANNOT USE DEADLY FORCE IN RESPONSE TO MERE WORDS** or, in most cases, to resist unlawful physical force.

The difficulty comes when trying to determine what force you may use as a confrontation evolves from mere words to physical force to deadly force. In general, you cannot be the aggressor. In reality, you should avoid any confrontation, unless circumstances require you to defend yourself or another.

EXAMPLE: You are walking through a shopping mall with your spouse, child or date, and three, young, males, wearing gang "colors," are walking toward you. As the three, young males walk past you, one of them bumps your shoulder. He immediately turns, flashes a gang sign, "flips you the bird," and starts yelling at you. He uses more profanity than you

have ever heard before, and he directs it at you and your spouse, child or date. You ignore him and start to walk away, but he and the other two, young, males follow. Now, they are all yelling at you and cursing you. They walk circles around you as you walk down the mall. They dare you to "step outside," and they graphically describe how they are going to "cut" you and your spouse, child or date. No one comes forward to help, and there are no security personnel or police in view. You are carrying a loaded pistol under you jacket. One of the young males approaches within two inches of your face and screams that he is going to kill you.

KEEP YOUR COOL! If you pull your gun and shoot, you will not be justified. Until you are threatened with imminent death or serious physical injury, you cannot use deadly force. Do not display your gun - that is aggravated assault. Do not tell the youths that you are armed - that gives away a tactical advantage (surprise) and may cause the situation to escalate. Even if one of the youths shoves you, keep your cool and your balance! Rather than letting the anger build, start planning "what if." Plan what you will do if one of the youths pulls a knife, if one pulls a gun, if more than one pulls knives or guns, if one produces a club, etc. Think it through and look for tactical advantage. What escape routes are available? What cover is available? Which of the youths is closest? Keep a clear view of all three youths! Maximize your distance from the youths. Do you see any bulges under their clothes that indicate a possible weapon? Is there a restaurant or crowded store where increased security or help is available? How are you going to keep your spouse, child or date out of the line of fire if deadly force becomes justified and necessary? Can you use deadly force without hitting someone else; if so, how do you need to improve your position; if not, can you move into a position where use of deadly force and risk of harm to bystanders is minimized? In short, think, plan and stay cool, but remember that mere words never justify the use of deadly force.

- b. There are important **limitations on self-defense**. You cannot use force against a police officer, even if you believe you are being illegally arrested, unless the physical force used by the police officer exceeds that allowed by law. You cannot provoke a fight and then act in self-defense, unless (a) you first withdraw from the fight or clearly communicate your intent to withdraw, but you believe you cannot safely withdraw, and (b) the other person nevertheless continues or

attempts to use unlawful physical or deadly force against you. A.R.S. § 13-404(B)(3)(a) & (b).

c. Examples of self-defense cases:

Let's discuss examples of when use of deadly force or threatened use of deadly force in self-defense are and are not justified. You must apply the foregoing legal principles to the examples. Keep in mind that these examples are drawn from **real cases** involving real people. The results may seem unfair in some cases. You must recognize that juries can differ on what constitutes a "reasonable" belief that self-defense is required. You must recognize that the clearer the need for self-defense, the stronger the likelihood self-defense will prevail in a criminal or civil trial.

EXAMPLE: You are driving to work when a bearded, filthy-looking man in a VW microbus starts honking at you. The man violently shakes his fist at you. His eyes are red. He follows you through heavy traffic, and runs a red light to keep "on your tail." Suddenly, you find yourself caught in heavy traffic behind a red light. There are cars on your left and cars on your right. You cannot drive forward, to the left, to the right, or to the rear. The man in the VW jumps from his vehicle and runs up to your car door. He begins beating on the driver's window and windshield with his fists. You pull your gun and display it or point it at him!

Congratulations, you have just committed aggravated assault. You lost your cool. You did not look to see if the man had a club, knife, or any weapon. You were watching his dirty, bearded, terribly contorted face, instead of scanning for weapons? By producing your gun before you had the right to use it, you risked escalating the situation, and you lost the tactical advantage of surprise. You should have kept an eye on the man's hands, scanned for weapons, had your gun at the ready but hidden from view, and prepared to speed away when traffic began to move.

The police arrive on the scene, but you are lucky. They do not charge you, and they tell you to drive away NOW! Do it!

EXAMPLE: You are a passenger in the family car. Your spouse is driving north on the freeway. Suddenly, a car pulls up next to you and the driver rolls down his window and begins yelling something and shaking his fist. He "flips the bird" at you, and acts like a madman. You and your spouse

cannot understand why this guy is so mad at you.

Your spouse speeds up and maneuvers through the freeway traffic. The madman is following closely, and each chance he gets, he pulls up beside your car and starts yelling and shaking his fist again. Your spouse drives off the freeway onto an access road, and the madman follows. You re-enter the freeway, and the madman follows, honking his horn and shaking his fist all the way.

As the madman pulls up next to you again on the freeway, you decide to let him know that you are armed. You hold up your pistol to the window, being careful not to point it at the madman. He sees your pistol and takes the next freeway exit.

A few minutes later, a police car pulls up behind you and your spouse and the policeman indicates you should pull off the freeway. Your spouse complies, and you are arrested for aggravated assault. You are sentenced to a minimum of 3 1/2 years in prison.

This all really happened, but fortunately not to you. Although this freeway dispute occurred between occupants of moving vehicles, you were never threatened with deadly physical force. You were not legally justified to threaten the use of deadly physical force, but displaying your gun under these circumstances constituted such a threat. Moreover, you did not use good tactical judgment. You revealed you were armed, thereby losing a tactical advantage and risking escalation of the conflict. Moreover, even if the madman had been shooting at you, shooting back in heavy freeway traffic is almost certainly a legal and tactical blunder. A moving car is not a good defensive position from which to use a gun! You should have driven off the freeway and searched for a fire station (they are more plentiful than police stations; they are usually open; there is usually someone awake and on duty to help) or some other location where you might find help. Under a worse case scenario, you need to improve your tactical advantage, *i.e.*, seek cover and a stable position from which you can safely defend yourself.

EXAMPLE: You live in California, are in your mid-forties and have an adult daughter who has been involved in a tumultuous marriage. Your daughter's divorce is pending, and she has moved back into your house. Her husband is constantly calling and threatening her and you, and he has repeatedly come to your home and beat on the door, refusing to leave. You have called the police several times, and your daughter has obtained a restraining order to keep

her husband away from her. Nonetheless, your daughter's husband continues to call and visit your house at all hours of the day and night.

Out of concern for your daughter's safety, you arrange with your church to travel with your daughter to Phoenix, Arizona to stay in a "safe house." You arrive in Phoenix and learn that the safe house is a small unit at a motel. You and your daughter move into the safe house, planning to stay a few weeks, while her divorce becomes final and her husband cools off.

Late one night during the first week at the safe house, you hear a loud pounding at the door and the yelling of your daughter's husband. You go to your daughter's side. The pounding at the door becomes louder, and your daughter's husband crashes through the door. He has a gun in one hand. He beats you until you are semi-conscious. You stumble outside into the parking lot. He pursues you into the parking lot. You head for your vehicle, where you have a Walther 9mm pistol, and you retrieve your pistol. He is still coming after you with his gun in his hand, pointed at the ground. You shoot him several times, killing him.

The police arrive, they question you and your daughter off and on for over ten hours, they seize your gun, but they do not arrest you. The investigating officer tells you that he doubts that any charges will be filed against you, but it is up to the district attorney. You and your daughter return to California.

Months go by, and you repeatedly call the Phoenix homicide detective who investigated your case. His assurances become stronger, but you never receive any official notification that no charges are being filed against you. Finally, nine months after the shooting, the police investigator tells you that the district attorney is not going to charge you with a crime, but you will receive no official notification. Six months later, with the aid of your attorney, you recover your pistol from the Phoenix police department. You have been involved in the "justified" use of deadly force, but you will never receive any official ruling or notification. You will never receive any explanations or communications from the district attorney's office. You cannot deduct your modest legal expenses from your income for tax purposes. Yet, you were lucky.

The U.S. and all the state criminal justice systems are designed to prosecute people. In most states, the criminal justice system has no established procedures for officially clearing people without a trial. There is simply no

prosecution, or charges are dismissed. There is no hero's thank you, no official document to show an official or employer who asks about the case, and no reimbursement for your expenses and legal fees. In short, until citizens require their local and national governments to treat them differently when they act in self-defense, those who act in self-defense will be treated as though they did something terribly wrong, rather than being congratulated for legally acting decisively to save their lives. Texas and some counties in Arizona use grand juries to review defensive shootings and issue "no bills" where the shootings were justified, effectively clearing citizens who have used or threatened to use deadly force with justification.

EXAMPLE: You come under attack by several gang members in a parking lot outside a Phoenix mall. None of the five gang members is visibly armed, but they have nearly surrounded you. There is a path of escape, but you are unsure whether you can outrun the gang.

You have a tough choice. Since you are in a place where you have a right to be, you are not legally obligated to run, and you may defend yourself with deadly force in order to avoid great bodily harm. *State v. Palomarez*, 134 Ariz. 486, 657 P.2d 899 (Ariz. App. 1982). Although none of the attackers is obviously armed, if the circumstances are such that a reasonable person in your position would consider himself in imminent danger of losing his life or sustaining great bodily harm, then use of deadly force would be justified. *Walker v. State*, 52 Ariz. 480, 83 P.2d 994 (1938); *State v. Andersen*, 177 Ariz. 381, 387, 868 P.2d 964, 970 (Ariz. App. 1993); *State v. Buggs*, 167 Ariz. 333, 335, 806 P.2d 1381, 1383 (Ariz. App. 1990). At trial, the you will have the burden of proving by a preponderance of the evidence that you were acting in self-defense, *i.e.*, acting with justification. A.R.S. § 13-205. (The defendant's burden to prove justification was ruled constitutional in *State v. Farley*, 199 Ariz. 542, 19 P.3d 1258, review denied (App. Div. 1, 2001).

What if you are justified to use deadly physical force, but you succeed in escaping, by running back to the mall. After waiting ten minutes, you go back to your car in the parking lot. As you are nearing your car, you see the same gang standing nearby. Even if you had the right to use self-defense under the circumstances that existed ten minutes earlier, you no longer have that right, unless the gang

members again attack you. In other words, even though you might feel that the gang will attack you, until the attack begins or is reasonably imminent, you are not justified to use physical force or deadly physical force. *State v. Buggs, supra*. The moral - do not go back to the fight from which you have escaped.

- d. **Duress** is often confused with self-defense, but it is different. If someone puts a gun to your head and threatens to kill you unless you do as you are told, you are being asked to act under duress. Although duress is a defense to committing many crimes, **duress is never a defense to shooting someone**. Even if someone is threatening you or a loved one with death, the law does not permit you to shoot an innocent third person to avoid that threat.

EXAMPLE: Two thugs break into your house, tie and bind you and your spouse, rummage through your possessions, and begin to argue violently between themselves. One is armed and the other is not. While the unarmed thug is outside the front door of your house "cooling off," the armed thug moves close to you and your spouse, unties you, hands you an unloaded shotgun he found in your closet, moves behind your spouse and puts his .357 magnum revolver to your spouse's head, throws you one round of "buckshot" from a box of shells he found on the shelf in your closet, and orders you to go outside and shoot his unarmed partner or he will "blow your spouse's head off." He promises that if you do as he instructs, he will leave you and your spouse unharmed, and you can claim that you shot one thug while the other got away.

Tough choice! Legally, you cannot shoot the unarmed thug who is standing outside your house. You would not be justified because the unarmed thug is not an immediate threat to you or your spouse, and he is no longer in the process of committing burglary or some other offense that might justify use of deadly force. If you shoot the unarmed thug, you cannot defend yourself by claiming that you were coerced by the thug who threatened to kill your spouse. Will you shoot the unarmed thug without (legal) justification (and without a guaranty that the armed thug will leave you and your spouse unharmed), or refuse to follow the armed thug's instructions and face a greater risk that your spouse (and perhaps you) will be killed, or take the even greater risk that you can shoot and disable the armed thug with buckshot without hitting your spouse and before he

can shoot you or your spouse?

2. **Defense of another person - A.R.S. § 13-406**

The rules for determining whether you are justified in using deadly force to defend someone else are similar to those for self-defense.

a. You would be justified in threatening or using physical force or deadly physical force against another person to protect a third person if, under the circumstances known to you, a reasonable person would believe (1) that the third person would be justified to use such force against the other person, and (2) a reasonable person would believe that your intervention is immediately necessary to protect the third person.

b. **EXAMPLE:** As you approach an ATM late at night to withdraw some cash, you stumble onto a drug arrest. The area around the ATM is deserted, except for a uniformed police officer, the suspect and you. You are close enough to clearly overhear the officer warning the suspect of his rights and notifying him that he is being arrested for sale of cocaine. You personally recognize the officer from an occasion when he testified in court when you served as a juror. You "stand by" as the lone police officer is handcuffing the suspect. You have a loaded Colt Government model 45 ACP (a semi-automatic pistol) in "condition 1" (cocked with a round in the chamber and the safety on) in a holster under your jacket, and you know how to use it (you have taken several pistol courses and practice regularly).

Suddenly, the suspect spins around and seizes the officer's pistol, stands back, points the pistol at the officer's head and snarls "You're a dead mother f---er!" You have a clear, unobstructed, profile view of the officer and the suspect who are 15 feet from you. The light from the ATM is reflecting off the faces of the officer and the suspect, and they are outlined by the well-lit bank building.

You may legally shoot the drug suspect! The officer would be justified to shoot the suspect in self-defense, and your immediate intervention appears reasonably necessary to save the officer.

In analyzing when you can use deadly force in defense of another, it is helpful to use self-defense examples, and imagine that you are coming to the defense of the person who is justified to use self-defense. The additional factor you must consider is whether your

intervention would be immediately necessary. If so, you are justified to use deadly force to protect another.

3. Defense of property - A.R.S. §§ 13-407 & 13-408

a. You may **threaten** to use **deadly physical force** or **threaten to use or use physical force** to the extent that a reasonable person would believe it immediately necessary to prevent or terminate the commission or attempted commission of a criminal trespass by another person on your property (**real property or human lodging**, e.g., trailer, camper, etc.) or property in your lawful possession or control. (A.R.S. § 13-407.A)

1) You may **use deadly force** under the foregoing circumstances only in self-defense or in defense of a third person. (A.R.S. § 13-407.B)

2) **EXAMPLE:** You are throwing a New Year's party at your home. Your living room is crowded with guests. A party crasher walks into your house. You do not know him, and none of your guests knows him. You ask the party crasher to leave, and he says "Kiss my a--!" You again ask him to leave, and he moves his face within two inches of your face and snarls "Go f--k yourself!" You have a Sig Sauer model 226 (a 9mm semi-automatic pistol) in a drawer near the living room telephone. Can you retrieve your pistol, point it at the party crasher, and demand that he leave?

You can legally threaten the use of deadly force to evict a trespasser, and the party crasher is a trespasser. However, this is where judgmental shooting and tactics must also be considered. By playing the "what if" scenario, you will see that the law permitting you to threaten deadly force to evict a trespasser is meaningless in most urban situations. Let's practice "what if."

You point your Sig Sauer at the party crasher, three inches from his face, and say, "Get out of my house or I'm gonna blow your head off!" He stares into the muzzle of the Sig and says, "How would you like me to take that gun and stuff it up your ---?" Now what do you do. You only have justification to threaten deadly force to evict a trespasser. You are not justified in using deadly force to evict a mere trespasser.

Moreover, your living room is filled with your guests. Imagine the dire possibilities if you and the party crasher get into a fight for control of your pistol. By using the legal excuse of threatening deadly force to evict a trespasser, you have put yourself and your guests into a potentially deadly situation. Now, what do you do?

Despite your legal right to do so, you should have exercised judgment. Under the circumstances of this "what if" example, you were stupid to go for your gun and threaten deadly force to evict a trespasser. There were several, better tactics to handle the situation. Next time call 911 and stay near your gun in case the party crasher himself threatens deadly force with some weapon. Leave it to the police to evict the trespasser.

- b. You may use physical force against another when and to the extent that a reasonable person would believe it necessary to prevent what a reasonable person would believe to be an attempt to commit or commission by another of theft or criminal damage involving **tangible movable property under your possession or control** (A.R.S. § 13-408), and you may use deadly physical force in self-defense, defense of another or to prevent certain special crimes (see below).

EXAMPLE: Like the law that permits threatening deadly force to evict a trespasser, the law permitting use of physical force to stop theft of your property should be tempered by judgment and tactical considerations. Let's play "what if."

You are sitting at home in your living room in front of a large window watching TV during the evening. You suddenly see the motion activated flood light above your front door illuminate a figure that is using a wire coat hanger to open your locked Porsche automobile, parked on the street in front of your house. Can you legally go outside and physically stop the theft of your prized car from in front of your house - sure. But should you? Think tactics and judgment. Let's continue the "what if" game.

You tuck your Beretta model 92F (a 9mm semi-automatic pistol) into your waistband, put on a jacket to conceal the gun, and go out to confront the jerk who is stooped over your beautiful Porsche. You know that you can use physical force to stop him, so you approach and shout "Hey, what the hell are you doing?" You plan to deck this jerk when he turns around. Then . . . the jerk turns and

stands erect as you approach. My God! He is at least six foot seven and his shoulders completely block the entire Porsche from your view!

At this point you say to yourself, "I can threaten or use only physical force to stop this theft, but I don't think my threat or use of physical force will do anything to this monster. I cannot threaten deadly force because he is not a trespasser on my property (and that would be stupid anyway - recalling the party crasher at your New Year's party). I cannot use deadly force because my life is not in imminent danger. I'm screwed!"

Under this scenario, you are really going to feel stupid just standing there as this guy drives away in your Porsche, but you did not take time to call the police. Do you recall the amount of the deductible on your insurance? Wait, let's continue "what if."

Undeterred by the obvious superior physical abilities of the guy who will soon be driving your Porsche, you stupidly say "Leave my car alone, or I'll kick your a--." (Ah! It is so satisfying to use your right to threaten physical force to stop the theft of your Porsche.) Then, the monster does something stupid. He pulls a BIG knife from behind his back, and says "I'm gonna cut your f---ing head off" and steps toward you. (Now, aren't you glad that you tucked your Beretta into your waistband?)

At this point, you will be justified to threaten or use deadly force in self-defense, and you do so. Unfortunately, this guy is so BIG that he doesn't drop his knife and cease being a threat to you until you have used 14 of the 15 rounds in your Beretta, and guess what? Your Porsche acted as the bullet stop for at least 10 of those rounds. Aren't you glad that you decided to stop this guy yourself. Now, how much deductible did you have on your Porsche insurance?

Obviously, you should have called the police before going outside to save your precious Porsche. You would have been wise to wait to let the police handle the situation. Under this scenario, you proceed at your own risk when you exercise your right to use physical force to stop a theft. Is it worth the risk?

4. Prevent special crimes - A.R.S. § 13-411

- a. You may **threaten or use both physical force and deadly physical force** against another to the extent you reasonably believe that such force is **immediately necessary to prevent** the other's commission of **arson of an occupied**

structure [of your home],³ burglary in the second or first degree [of your home],⁴ kidnapping, manslaughter, second or first degree murder, sexual conduct with a minor, sexual assault, child molestation, armed robbery, or aggravated assault. You will be presumed to be acting reasonably if you are acting to prevent the commission of any of the foregoing offenses. However, this "presumption" disappears if there is any evidence that you acted unreasonably, and you must prove justification by a preponderance of the evidence. *State v. Martinez*, 202 Ariz. 507, 47 P.3d 1145 (App. Div. 1, June 4, 2002), review denied.

You have no duty to retreat before threatening or using deadly physical force to prevent these special crimes (A.R.S. § 13-411). Nonetheless, "retreat" can have two useful purposes: (a) shooting tactics include maximizing the distance between you and your target and minimizing your exposure, and (b) evidence that you tried to avoid having to use deadly force will aid in your justification defense.

EXAMPLE: You drive up to your house after work, and are

³ Although A.R.S. § 13-411 contains no limitations or even reference to residence or home, the courts have construed it to apply to threatened arson or burglary of one's residence (see discussion of *State v. Garfield* in following footnote). The declaration of policy which accompanied the passage of this law by the Arizona legislature states that "The legislature finds that homes of Arizona residents are being burglarized and violated at an alarming rate that is endangering the residents' safety, health and property, thereby depriving them of their safe and peaceful enjoyment of their homes." The statement of policy continues, "It is the legislative intent to establish a policy by this law giving notice to all citizens, law enforcement personnel and the state courts that a person's home, its contents and the residents therein shall be totally respected and protected in Arizona, and that the law enforcement officials and courts shall apply this and all other applicable criminal laws relating to the protection of the home and its residents promptly and severely so as to restore the total sanctity of the home in Arizona." This legislative intent is bolstered by the reference to first and second degree burglary, *i.e.*, armed and unarmed burglary of a residence, respectively.

⁴ See preceding footnote. Burglary of an occupied motel room has been ruled to fall within this justification defense. A.R.S. §§ 13-411 & 13-1507(A); *State v. Gardella*, 156 Ariz. 340, 342, 751 P.2d 1000, 1002 (Ariz. App. 1988); *State v. Hussain*, 189 Ariz. 336, 942 P.2d 1168 (App. 1997). In other words, you may defend against a burglary of your temporary "home" in a motel, etc. *State v. Garfield*, (2 CA-CR 2002-0037, June 30, 2004) ruled that a person invited to another's residence to protect the sanctity of another's residence may assert justification under A.R.S. § 13-411.

looking forward to seeing your spouse and kids. They are waiting in the house to go to dinner and the movies with you.

First Scenario - You see a man preparing to throw a "Molotov Cocktail" (fire bomb) through the front window of your house. You yell "Stop," but he lights the rag fuse and moves to throw the Molotov Cocktail into your house. You may threaten or use deadly force to stop him.

Second Scenario - As you enter your house, you hear your children screaming. You walk into the living room, see that the back door has been shattered inward, and a large, filthy man is trying to drag your youngest child out of the house. You yell "Stop," but he ignores you. You may threaten or use deadly force to stop him.

Third Scenario - After dinner, a movie, and a quiet drive home, your family falls asleep quickly. You hear the sound of shattering glass, and see a dark hulk climbing through your bedroom window. You yell "Stop," but the hulk steps through the broken window and steps toward your bed. You may threaten or use deadly force to stop him. You need not turn on a light to first check and see if the hulk is armed. But, be sure of your target! You would not want to shoot your teenage son who was out late, got drunk and lost his keys.

EXAMPLE: You drive up to the gas pump at a convenience store where you often buy gas. You enter the store to pre-pay for the gas. Two people are standing stiffly and quietly by the lottery display near the cashier's counter, and a third person is standing nervously behind the counter. You offer \$20.00 to pre-pay for the gas, and the man behind the counter visibly bites his lip and says "Pay after you fill up."

You go back to your car to fill up, but stop midway because you've got a funny feeling that something is wrong. You turn back toward the convenience store and see that no one is moving, except the man behind the counter, who has his right arm extended out and downward toward the floor behind the counter. Then you see it - the man behind the counter is holding a gun in his right hand.

You quickly walk to your car, retrieve your S&W model 66 (a double action revolver), and go to the pay phone to your right on the front of the convenience store. As you dial 911, the man you saw with the gun starts to exit the store, sees you and turns toward you as he raises his gun. You can use deadly force in self-defense, but the robbery is over! You could have used your gun earlier to stop the robbery, but tactical and safety considerations would make

such an effort very risky.

5. Private Prison Guards - A.R.S. § 13-416

Private correctional guards (“security officers”) who meet the standards established by the American Correctional Association may use “all reasonable and necessary means, including deadly force” to prevent a prisoner in the custody of a private contractor from escaping, taking a hostage, causing death or serious injury to another.

6. Necessity Defense - A.R.S. § 13-417

a. Passed in 1997, A.R.S. § 13-417 creates a justification defense for a person who is compelled to engage in certain conduct, provided:

- (1) the conduct was necessary in order to avoid imminent public or private injury greater than the injury that might result from the conduct;
- (2) the accused person did not intentionally, knowingly or recklessly place himself in the situation in which it was probable that the person would have to engage in the proscribed conduct; and
- (3) the conduct does not result in a homicide or serious physical injury.

It would seem that the “necessity defense” would not apply to the use of deadly force because the use of deadly force “might result” in death. No threatened injury could be greater than death, therefore use of deadly force would not constitute a “necessity.” Clearly, if death or serious physical injury actually results, the “necessity defense” would not apply. Whether the **threatened** use of deadly force might be recognized by a court as a potential “necessity defense” remains unresolved. It is conceivable that a person might threaten the use of deadly force, without causing death or serious physical injury, in order to avoid imminent death or serious injury to the accused person or another person, thereby meeting the requirements for the “necessity defense.”

B. Applicability in criminal and civil cases - A.R.S. § 13-413

1. No person in this state shall be subject to civil liability for engaging in conduct otherwise justified under the statutes you have examined.
2. Although Arizona has a strong policy that justification can be used in criminal and civil cases, you must remember that it is far easier to "prove" a civil case than a criminal case. If you use or threaten the use of deadly force, and the county prosecutor decides there is no criminal case or you are acquitted, the victim or the victim's family can still sue you in a civil case for damages. *Pfeil v. Smith*, 183 Ariz. 63, 900 P.2d 12 (App. 1995). Plaintiffs in such cases usually lose, especially in Arizona. Nonetheless, if you are required to use deadly force, you face the potential of a civil lawsuit. Your responsibilities and potential liabilities for carrying a concealed weapon are great, so do not take them lightly. **NEVER USE A GUN IF YOU CAN AVOID IT, CONSIDERING YOUR SAFETY AND THE SAFETY OF THOSE AROUND YOU.**

C. Additional special statutes regarding justification

1. Execution of public duty (A.R.S. § 13-402)
 - a. Pursuant to judgment or direction of court, or in the lawful execution of legal process (A.R.S. § 13-402.B.1)

EXAMPLE: A police officer serving a search or arrest warrant can use deadly force if it becomes necessary in the course of serving and executing the warrant.
 - b. Assist a police officer (§ 13-402.B.2)

EXAMPLE: You observe a police officer trying to make an arrest, and the suspect suddenly turns and disarms the officer or fights with the officer for control of the officer's gun. You can assist the officer with deadly force, if necessary. It does not matter whether the officer was acting legally, so long as you reasonably thought the officer was acting legally.

NOTE: Your conduct must be such that a "reasonable person" would believe the conduct was required or authorized by court or to assist a peace officer in the performance of official duties.

EXAMPLE: Police officer is beside road, with red lights flashing and a car pulled over in front of the police car. The police officer is exchanging gunfire with the person driving the unmarked car.

Would you be justified in firing at the driver of the unmarked car? Probably, but what if the person from the unmarked car is actually an FBI agent trying to arrest the police officer? Not likely, but the point is that if your assumptions are wrong, you proceed at your own risk. Even if you justifiably intervene, if you **recklessly** shoot someone else in the process, you would not be justified in shooting that third person.

2. Maintaining order (A.R.S. § 13-403)

- a. If you are responsible for the maintenance of order in a place where others are assembled or on a common motor carrier of passengers, or you are acting under the direction of someone with that responsibility, you may use physical force to the extent that a reasonable person would believe it necessary to maintain order, but you may use deadly force only if reasonably necessary to prevent death or serious physical injury. (A.R.S. § 13-403.3)

3. Use of physical force and deadly force during arrest or detention (§§ 13-409 & 13-410)

- a. You may threaten or use **physical force** to arrest or assist in making an arrest or detention or in preventing or assisting in preventing the escape after arrest or detention of another person, **if the other person uses or threatens to use physical force** and (a) a reasonable person would believe that such **force is immediately necessary** to effect the arrest or detention or prevent the escape, (b) **you make known the purpose** of the arrest or detention or believe that it is otherwise known or cannot reasonably be made known to the person, and (c) **a reasonable person would believe the arrest or detention to be lawful**. (A.R.S. § 13-409).
NOTE: The circumstances under which you may use physical force to arrest or capture an escapee or assist in an arrest or capture of an escapee are complex and confusing. For that reason, you should avoid injecting yourself into such situations.
- b. You may **threaten the use of deadly force** under the foregoing circumstances if a reasonable person effecting the arrest or preventing the escape would believe the **suspect or escapee is (a) actually resisting** the discharge of a legal duty **with deadly physical force or with the apparent capacity to use deadly physical force**, or (b) a felon who has escaped from lawful confinement, or (c) a felon who is

fleeing from justice or resisting arrest with physical force.
NOTE: This statute should not be relied upon as justification for shooting an escaping felon. It is likely that you will have an uphill battle to establish justification under this statute, unless you are actually acting in self-defense. The facts to justify such a shooting will be very difficult to establish. In addition, the first requirement that the escapee must actually be using deadly force before you can threaten use of deadly force is absurd! If an escapee is shooting at his pursuers, why would any statute authorize only threatened deadly force in response?

- c. You may use deadly physical force under the foregoing circumstances only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force. A.R.S. § 13-410.B NOTE: Again, justification for shooting a fleeing felon is difficult to establish. Leave law enforcement to the police!
- d. Examples of cases concerning use of physical and deadly force during arrest or detention involve police officers. There are no “published” Arizona cases (printed in a recognized legal “reporter” to give them legal precedential value) where this statute has been applied to non-police officers. In general, leave arrests and detention to police officers. Your potential liability for arrests and detentions which do not involve your house or property are too great for you to get involved, unless another justification is present. If the life of the police officer or yourself does not appear in jeopardy, do not even think about using or displaying your firearm to capture an escapee or assist in an arrest (unless asked by the officer - see below).

If you believe it is appropriate to aid a police officer, but you are unsure, follow this procedure if the circumstances permit: (1) inform the officer that you are armed, (2) ask the officer if he wants you to assist him, (3) if the situation does not dictate the assistance that is needed, ask the officer how he would like you to assist, (4) follow the officer's instructions, and (5) stop assisting the officer when he tells you to stop. A.R.S. § 13-2403.B provides that a person who acts reasonably and aids a police officer at the direction of the police officer shall not be held liable to any person for damages resulting therefrom. A.R.S. § 13-3802

gives a police officer, sheriff, etc. the right to "command" you to aid him in the execution of process in order to overcome resistance.

A.R.S. §§ 13-3884 & 13-3889 authorize citizen's arrests under certain circumstances and in prescribed manners, however you should exercise such a right only under the most dire circumstances. Even under dire circumstances, you are not obligated to make such arrests.

4. Domestic violence justification (A.R.S. § 13-415)

1. As noted earlier, the justification of self-defense normally requires an "imminent" threat of serious bodily injury or death. However, a special statute alters the requirement for an "imminent" threat of serious bodily injury or death in certain cases involving prior acts of domestic violence, as defined in A.R.S. § 13-3601.A. Basically, A.R.S. § 13-415 (1) permits a judge or jury to consider evidence that the victim had a history of committing acts of domestic violence against the accused, and (2) requires the judge or jury to determine whether the accused was justified "from the perspective of a reasonable person who has been a victim of those past acts of domestic violence."

- b. There are no "reported" cases interpreting this new Arizona law. The circumstances under which prior domestic violence will justify use of deadly force cannot be defined, but it is clear that the legislature intends that evidence of prior domestic violence must be considered in evaluating a claim of self-defense or defense of another.

VI. JUDGMENTAL SHOOTING

A. Shoot vs. No Shoot Situations

1. Self-defense justification
2. Defense of another justification
3. Defense of premises justification
4. Combination of justifications
5. Confrontations that accelerate into justification situations vs. confrontations where use of deadly force is not justified

You are hosting a party at your home. A party crasher enters your house. He is drunk and belligerent. You ask him to leave, but he refuses. You start to push him out the door, but he turns and swings at you. You strike him, and he pulls a knife.

You get into an argument with a stranger while walking in the mall. You lose your temper and punch or push him. He punches or pushes you back. You realize that you are acting like a fool, so you apologize and walk away. The stranger comes after you, teasing and taunting. The stranger steps in front of you and pulls a knife.

You get into an argument with a stranger who has taken your parking space at a crowded parking lot. You exchange heated words. You lose control and strike the stranger. He pulls a knife.

B. Group discussion of, participation in and analysis of shoot vs. no shoot situations

Your instructor will lead a discussion of possible scenarios, and you will be asked to create your own scenario and analyze it. You will be asked to explain the legal principals and the tactical/safety considerations.

VII. OTHER CONCEALED WEAPON CONSIDERATIONS

A. Contact with law enforcement personnel

1. Declaring possession of weapon and CCW permit

When asked by a law enforcement officer if you have a CCW permit, you must answer and produce your CCW permit if you are carrying a concealed weapon. If the officer asks if you have a firearm, answer truthfully, and describe the firearm, its location and its status (unloaded, loaded, unchambered, chambered, "condition 1," "condition 2," etc.).⁵ The law does not require that you **volunteer** to law enforcement officers that you have a CCW permit and firearm, but you might consider doing so, depending upon the

⁵ Condition 1, Condition 2, and Condition 3 are generally accepted terms to define the loaded condition of a single-action semi-automatic pistol of the Colt type or the double/single action H&K USP type. Condition 1 = loaded round in chamber, cocked, safety on; Condition 2 = loaded, round in chamber, uncocked; Condition 3 = magazine loaded and in gun, no round in chamber, uncocked. Law enforcement personnel untrained with such firearms may not understand such "conditions."

circumstances (e.g., if the presence of a firearm is likely to become a safety concern).

2. Conduct with law enforcement personnel during volatile situations

In volatile situations when you come into contact with law enforcement personnel, you should assess the situation quickly. Unless you can immediately leave the area, generally you should make it clear to law enforcement personnel that you have a CCW permit and a firearm. This is common sense and safety, but not a steadfast rule. You do not want to alarm an officer or interfere with an officer. You want to protect against surprise or concern under circumstances where an officer might discover that you are armed and mistake your intentions. Such disclosure is not required by law. You must bear in mind that law enforcement personnel in volatile situations are operating under stress, are likely experiencing the physiological effects of adrenaline, may be concerned primarily with their own safety, and are armed. You want to avoid becoming a threat or target simply because you are armed.

If a police officer stops you while you are driving and armed, follow some common sense rules: (1) keep your hands visible, preferably on the steering wheel; (2) if your gun is accessible in the car or if the officer asks whether you have a gun, inform the officer that you are armed, that you have a CCW permit, and the location of your gun; (3) follow the officer's instructions (depending upon the officer and the circumstances, you may or may not be asked to surrender your gun during the traffic stop); (4) if you are asked to surrender your gun, be certain that you communicate with the officer clearly regarding how you are to present the gun, and always remember the four basic safety rules.

3. Surrendering your firearm upon request of law enforcement

If a law enforcement officer asks for your firearm, you should ask the officer how he would like you to present it to him, and follow his instructions in a safe manner. While the circumstances will determine whether the law enforcement officer can legally seize your firearm for possible forfeiture (A.R.S. §§ 13-3105, 13-3111.F, 13-3601, 13-3602, 13-3624, 13-3895, 13-4305), **LAW ENFORCEMENT PERSONNEL ARE ALWAYS AUTHORIZED TO REQUEST THAT YOU SURRENDER YOUR FIREARM TEMPORARILY TO ENSURE THEIR OWN SAFETY.** Any person who is lawfully arresting you is authorized to take your firearm and turn it over to the magistrate before whom you are to be taken

(A.R.S. § 13-3895).

4. Law enforcement seizure of guns in domestic violence cases - A.R.S. §§ 13-3601 - 13-3602.

Effective July of 1996, law enforcement officers responding to domestic violence cases may question persons present to determine whether a gun is "present on the premises" and may seize any and all guns (found in "plain view" or pursuant to a consent to search). The gun(s) may be seized only from the aggressor or aggressors in a domestic violence case, not from the victim, unless the victim is also an aggressor. In order to seize the gun(s), the officer must "reasonably believe" that the gun(s) poses a serious risk to the victim or to another household member. The officer who seizes the gun must provide a receipt. The law enforcement agency that seizes the gun(s) must keep it for "at least seventy-two hours," may not return the gun until after the victim is notified that it is being returned, and a prosecutor can seek a court order to keep the gun(s) for up to six months. Courts can also prohibit the person from whom the gun(s) is seized from buying any guns while the order is in effect. The statute provides the gun owner the right to a hearing if a prosecutor files a notice of intent to keep the gun for up to six months. However, the statute provides no protection or remedy for those from whom guns are "temporarily" seized for "at least seventy-two hours." Nor does the statute define how long beyond 72 hours law enforcement may keep a gun before the prosecutor must apply for court permission. A.R.S. §§ 13-3601 - 13-3602.

In addition to on scene seizures of firearms, A.R.S. § 13-3602 authorizes the court to enter a protective order taking guns in domestic violence cases. If the Court finds that the defendant is a "credible threat to the Physical safety of the plaintiff" or other specific persons, the Court may prohibit the defendant from possessing any firearms and may order the defendant to turn over any guns he owns or possesses to law enforcement for the duration of the order. A.R.S. § 13-3602.G.

5. Federal "Domestic Violence" prohibition against gun possession. *Omnibus Consolidated Appropriations Act of 1997 (amending the Gun Control Act of 1968); 18 U.S.C. § 922(g)(9).*

Under a federal law, which became effective September 30, 1996 and which applies **retroactively**, it is unlawful for any person who has been convicted of a "misdemeanor crime of domestic violence" to possess, ship, transport, or receive firearms or

ammunition. According to a November 26, 1996 BATF letter to "All State and Local Law Enforcement Officials," anyone who has been convicted of any misdemeanor crime of domestic violence must surrender all firearms and ammunition or face federal prosecution. The BATF has asked local law enforcement to cooperate with it in enforcing this new law.

Under the new federal law, a misdemeanor crime of domestic violence includes any misdemeanor involving the use, attempted use or threatened use⁶ of physical force or threatened use of a deadly weapon⁷ against a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The new federal law does not exempt governmental employees, *i.e.*, police officers and others in government service who have been convicted of "domestic violence" cannot possess guns or ammunition, even in the performance of their duties. BATF has warned local law enforcement agencies to consider "appropriate action" against their employees who fall under the new law. The BATF has threatened criminal penalties against such persons who continue to possess guns or ammunition and has warned that the guns and ammunition of such persons are subject to seizure and forfeiture.

This federal law contains confusing, complicated exceptions, such as pardons, whether the person was represented by counsel, etc. These exceptions may make the law difficult or even impossible to constitutionally enforce. If you think that you might fall under this new law, consult an attorney regarding continued possession of firearms or ammunition.

6. Court prohibitions against possessing firearms

When a person is released from pretrial confinement, the

⁶ The Federal law incorporates state law "domestic violence" crimes, and Arizona's domestic violence statute (A.R.S. § 13-3601) includes assault, threatening and intimidation (A.R.S. §§ 13-1201 - 13-1204) as "domestic violence" crimes. Therefore, in Arizona, the threatened use of physical force against a spouse, etc. would be included as a "domestic violence" crime.

⁷ As explained earlier in this treatise, under Arizona law, the threatened use of a deadly weapon constitutes felony aggravated assault, which disqualifies a person from possessing a firearm. A.R.S. §§ 13-1204, 13-3101.6, 13-3102.4; 18 U.S.C. 922(d).

court can prohibit the person from possessing any “dangerous weapon.” A.R.S. § 13-3967. As noted earlier, domestic violence protective orders can also require a defendant to surrender his firearms to law enforcement for the duration of the protective order. A.R.S. § 13-3602.G.

7. **Defending yourself in a shooting investigation**

One of the easiest rules to remember but the most difficult rule to follow concerns how to respond to police when they are investigating a shooting incident in which **you** are involved. The rule is simple - **DO NOT GIVE THE POLICE A STATEMENT!** You should be polite but firm with the police, and tell them that you are in no condition to give them a statement and that you want to talk to your lawyer.

The reasons for this rule are simple. First, you will not be in any condition to give a complete, well-reasoned statement for some time after you have shot someone. Your body and mind will be going through some of the most stressful moments of your life. Even combat does not prepare someone for being asked to give a legal statement after a shooting. Your statement will be full of inaccuracies, missing details, excited word choices that you will later regret, confusing or even conflicting sequences of events, etc. This is why police officers are trained to seek legal advice before giving statements about shootings in which they have been involved.⁸ Police officers are always taken from the scene of a shooting, and their statements are prepared after several interviews over a period of time. You should do the same with your lawyer.

Second, you will need the help of someone who is familiar with criminal and civil procedural rules. There is much to be considered in deciding when, how and to whom a statement will be given. Even if the officer truly wants to help you, he has not been trained to protect your legal rights under criminal and civil law.

B. Responsibility to report shooting incidents

⁸ While it is true that police officers can be required and often are required to give statements to their departmental internal affairs investigators immediately after a police shooting, those statements cannot be used against them in any criminal proceeding. The simultaneous and separate criminal investigation is different. Officers are not required to give statements to the criminal investigators, and most officers are advised by their police unions and other professional organization not to do so. *Garrity v. State of N.J.*, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967).

A.R.S. § 13-3806 requires medical personnel to report gunshot and knife wounds which may have resulted from illegal or unlawful activity, including fights, etc., or risk being charged with a class 3 misdemeanor.

A.R.S. § 15-507.01 requires school personnel who observe a firearms violation on school premises to report the violation to the school administrator.

There are no general, statutory requirements for other persons to report shooting incidents or firearms violations. The right against self-incrimination (U.S. Constitution, Fifth Amendment) protects you from any requirement to report a shooting or firearms violation which you have committed. However, this not mean that it is in your best interest to refrain from reporting serious shooting incidents. If you fail to report such an incident, you are later arrested, and you claim that you acted justifiably, your earlier silence might be used as evidence that you knew you had acted improperly. Similarly, failure to report serious shooting incidents involving others might lead to you being charged as a participant with the others in criminal conduct.

C. Carrying concealed weapon on private property of another

1. Criminal trespass (A.R.S. §§ 13-1501 - 1505) does not limit rights of property owners to ask you to leave with your firearm.

A common misunderstanding is that if you are on private property open to the public, A.R.S. § 13-3102.A.10 limits the authority of the owner of the property from asking you to leave because you have a gun, unless the owner first offers to store your gun for you. Do not be confused. A.R.S. § 13-3102.A.10 defines a specific firearms offense (refusing to surrender your firearm for storage at a “public establishment” or “public event” as defined in A.R.S. § 13-3102.K.1&2) that is a class 1 misdemeanor. Generally, a private business is not a “public establishment” or “public event” under this statute, and private businesses retain the right to restrict guns. If you are told to leave private property because you have a firearm, you must do so or you can be charged with criminal trespass (A.R.S. § 13-1501 - 13-1505).

D. Local Government buildings; Public places and public events

If you go to a “public establishment” or “public event,” and the operator or sponsor asks you to remove your weapon and place it in the custody of the operator or sponsor, you must do so or leave. Failure to do so is a class 1 misdemeanor under A.R.S. § 13-3102.A.10. Effective July 18, 2000, this provision applies to municipal and county structures,

vehicles or crafts (“public establishments” under A.R.S. § 13-3102.K.1) and “public events” (special events sponsored, licensed or permitted by a public entity - A.R.S. § 13-3102.K.2). As part of the new state preemption law (A.R.S. § 13-3108), cities, counties and towns may no longer have ordinances or rules regulating where firearms may be carried, except as specified in state law. Effective July 18, 2000, state law requires local governments to offer to check firearms if they want to prohibit them from being carried in their buildings.

E. Federal facilities

You may not take a firearm into federal offices, courts, etc., but you cannot be prosecuted for doing so unless the facility is posted. You may not take a firearm into a military post without the authorization of the post commander.

F. Arizona CCW permit applicability outside Arizona - Reciprocity

Remember that your CCW permit carries no force of law outside Arizona, unless recognized by another state. Some states unilaterally recognize Arizona permits and some states have formal mutual recognition agreements with Arizona, i.e., reciprocity agreements. In addition, Arizona recognizes permits from some states if they meet Arizona statutory requirements. A.R.S. §13-3112.

<u>Reciprocity States</u>	<u>States Recognize Arizona Permits</u>	<u>Permits Recognized by Arizona</u>
Alaska	Alaska	Alaska
Arkansas	Arkansas	Arkansas
Kentucky	Colorado	California
Michigan	Delaware	Colorado
Ohio	Florida	Connecticut
Texas	Idaho	Delaware
Utah	Indiana	Florida
	Kentucky	Iowa
	Louisiana	Kentucky
	Michigan	Louisiana
	Missouri	Maryland
	Montana	Massachusetts
	North Carolina	Michigan
	North Dakota	Minnesota
	Ohio	Missouri
	Oklahoma	Montana
	South Dakota	Nevada

	Tennessee	New Mexico
	Texas	North Carolina
	Utah	North Dakota
	Virginia	Ohio
	Wyoming	Oklahoma
		Oregon
		South Carolina
		Tennessee
		Texas
		Utah
		West Virginia
		Wyoming

NOTE: Some cities, towns or counties within these states may not recognize Arizona CCW permits or might have their own local gun laws. You are responsible for knowing the gun laws in any state, city, town or county where you carry a gun. Since the laws in all the states constantly change, the foregoing recognition list will continue to change. For current information, you should check with DPS (web page <http://www.dps.state.az.us/ccw/ recip.asp>), your instructor, the National Rifle Association or the appropriate state, city, town or county before traveling outside Arizona to learn about new CCW reciprocity agreements, whether your CCW permit is recognized currently at your travel destination, and whether a permit from out-of-state is recognized in Arizona.

G. National Parks are different than National Forests

While you can carry firearms in national forests, you may not carry any loaded firearm into a national park (except for specifically authorized hunts). If you plan to travel to a national park, you should plan where to store your firearm before entering the national park, or leave your firearm at home. If your travels with a firearm require you to enter a national park, unload your firearm, store the ammunition separately from the firearm, "break down" the firearm if possible so that it is not readily operable, and lock it away from access while you are driving.

Although it is permissible to carry a firearm in Arizona in the national forests, there are a growing number of areas within the national forests that are posted no shooting. If you discharge a firearm within one of these areas, you can face criminal charges.

H. State Parks

Many state and county parks are posted no weapons. If you are

entering a state or county park, look to see if it is posted. If it is not posted, you may take your firearm with you into the park.

I. Bars

As noted earlier in this CCW course, you may not take a gun into a commercial establishment that serves alcohol for consumption on the premises.

J. Federal Gun Free School Zones

BACKGROUND OF THE LAW

In 1991, the U.S. Congress passed the "Gun Free School Zones Act," 18 U.S.C. § 922(q). The Act purported to regulate the carrying and discharge of firearms in federally created "school zones" (*i.e.*, within 1000 feet of elementary and secondary private and public school property). In the case *U.S. v. Lopez*, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), the U.S. Supreme Court ruled that the 1991 "Gun Free School Zones Act" was unconstitutional because Congress had exceeded its authority under the Constitution's "Commerce Clause." The *Lopez* case marked the first time since Franklin D. Roosevelt "packed" the Supreme Court with additional justices in the 1930s that the Supreme Court had limited Congress' power under the "Commerce Clause."

In the closing days of the 1996 U.S. Congress, a new "Gun Free School Zones Act" was attached to a 2,000+ page omnibus spending bill, Congress approved the bill, and the President signed it into law.

WHAT THE LAW SAYS

There are two parts to the new "Gun Free School Zones Act." The first part makes it unlawful to "knowingly possess a firearm" that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone." 18 U.S.C. § 922(q). There are seven exceptions to this prohibition:

1. possession of a firearm on private property not on school grounds;
2. if the individual is licensed by the State in which the school zone is located to carry a firearm, and the licensing requirements include verification that the individual is qualified under law to receive the license;
3. if the firearm is not loaded and is in a locked container or locked firearms rack on a motor vehicle;
4. if the firearm is possessed by an individual for use in

a program approved by the school;

5. if the firearm is possessed by an individual with a contract with the school [e.g., school security guards];

6. if the firearm is possessed by a law enforcement officer acting in his or her official capacity; and

7. if the firearm is unloaded and possessed by an individual enroute to hunting with the permission of the school authorities.

The second part of the "Gun Free School Zones Act" prohibits the knowing or reckless discharge or attempted discharge of a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone. There are four exceptions to the prohibition against discharging or attempting to discharge a firearm in a school zone:

1. on private property that is not part of a school ground;
2. as part of a training program approved by the school;
3. by an individual under contract with the school [e.g., school security guard]; and
4. by a law enforcement officer acting in an official capacity.

For the Arizona resident, the "Gun Free School Zones Act" restricts rights under state law. Arizona law permits carrying an "unconcealed" loaded firearm on your person or in an automobile, but federal law now prohibits doing so in a federal "school zone," except as specifically permitted under the federal statute. Arizona CCW permittees appear to qualify under the federal law to carry their guns in the federal school zones. However, a CCW permittee is not authorized to discharge or attempt to discharge a gun in a federal school zone, even though doing so might be justifiable under state law and viewed as a moral obligation under certain circumstances (e.g., to save innocent school children from an armed attacker).

As explained earlier in this treatise, under Arizona law, a person may use a firearm to defend against imminent threat of death or serious bodily injury or to stop specified criminal acts (e.g., rape, robbery, kidnapping, etc.). However, it is illegal under the "Gun Free School Zones Act" to knowingly or recklessly discharge or attempt to discharge a gun in a federal school zone.

A violation of the "Gun Free School Zones Act" carries a federal penalty of fine and imprisonment for up to five years. 18 U.S.C. § 924(a)(4). Since self-defense and other Arizona "justification" laws do not apply to the "Gun Free School Zones Act," a person who knowingly

discharges a firearm in a federal school zone in self-defense or to save children from an armed madman would be subject to prosecution by federal authorities and sentencing up to five years in federal prison. No doubt the members of congress who voted for the "Gun Free School Zones Act" would assert that no federal prosecutor would pursue such a case. But if no federal prosecutor should pursue such a case, why does the "Gun Free School Zones Act" make no exceptions for those who use a firearm legally under state law? The reality is that people have been prosecuted and imprisoned in the United States for unlawfully discharging a firearm while lawfully acting in justified self-defense. Therefore, you should be aware that, if you fire your gun within a federal school zone to justifiably defend yourself or someone else, you risk federal criminal prosecution.

K. Indian Reservations

Because each tribal council makes the rules that apply on its reservation, the firearms rules on Indian reservations vary greatly. For the most part, non-Indians are prohibited from carrying guns on the reservations, except with the permission of the tribal council. Therefore, your CCW permit probably has no meaning on most Indian reservations. However, so long as you remain on state or federal highways that pass through the reservations, your CCW permit will likely be honored in Arizona. If Arizona CCW permits are acceptable in another state, the same rule would likely apply if you travel on state or federal highways across Indian reservations in that state.

L. Military Reservations

Most military reservations are clearly posted to prohibit the carrying of firearms without the consent of the post or base commander. As with Indian reservations, so long as you remain on state or federal highways that pass through military reservations, your CCW permit will likely be honored in Arizona. If Arizona CCW permits are acceptable in another state, the same rule would likely apply if you travel on state or federal highways across military reservations in that state.

M. Airports

Unless otherwise indicated, persons may possess weapons in an airport except at or beyond security checkpoints. Because airports have been conspicuously posted for many years, most people are aware that they may not carry a firearm past the security check point in U.S. airports. You must check your firearm, unloaded, with your luggage. A CCW permit does not permit you to carry your firearm through the security check point.

VIII. **MAINTAIN CONTROL OF YOUR GUN!**

The greatest liability exposure you face when carrying a firearm for self-defense is the prospect that you will get used to carrying it. As you become accustomed to carrying a firearm, you risk becoming complacent about safeguarding it. Police officers know how complacency can lead to losing control of a gun - it is quiet common. The results can be devastating.

Never, never leave your firearm accessible to others. If you carry it in a purse, briefcase or other carrying case, never leave it unattended for even a moment. Keep it in your possession at all times. If you are unwilling to accept this responsibility, you should not carry your firearm. Strange as it may seem, even police officers have been known to lay down firearms during breaks, rest room visits, lunches, physical activities, etc. and forget, leaving firearms to be found by others. It can happen to anyone, so beware, think and assume the responsibility that goes with carrying a firearm.

The Arizona legislature has been unwilling to pass criminal statutes to penalize those who leave their guns accessible to children and other "incompetents." However, the Arizona courts have expressed their willingness to extend civil liability to such situations. If you provide a gun to a juvenile, a drunk, a mentally defective person, etc., accidentally or intentionally, and it is used by that person in a shooting, you risk serious civil law liability exposure.

In one case, *Petolicchio v. Santa Cruz County Fair*, 177 Ariz. 256, 866 P.2d 1342 (Ariz. Sup. 1994), the Arizona Supreme Court was called upon to examine the liability of an organization that supplied alcoholic beverages to juveniles. In the course of its analysis, the Supreme Court said the following at page 262:

"Furnishing firearms is another area in which courts frequently impose a duty of care. Even though a third person's criminal act directly caused the injury, if a person or business negligently provided or allowed access to a gun, there could still be liability to the injured party."

In other words, if you negligently provide or allow an incompetent person (juvenile, drunk, mental patient, etc.) access to your gun, and that person shoots someone with your gun, the injured victim can sue you!

In *Crown v. Raymond*, 159 Ariz. App. 87, 764 P.2d 1146 (Ariz. App. 1988), the Arizona Court of Appeals reviewed a case in which a gun shop owner supplied a handgun to a 17 year old minor who used the gun to kill himself. The Court ruled that statutes forbidding the sale of handguns to minors did not create absolute liability on the gun shop owner, but the sale of the gun to a minor who used it to commit suicide was negligence per se. In other words, if you unlawfully provide a juvenile a gun and an

injury results, your act was negligent. You can be held liable for civil damages if it is proved that providing the gun to the minor was the proximate cause of death or injury.

In *Petolicchio*, described above, the Arizona Supreme Court cited a Washington case with approval - *Bernethy v. Walt Failor's, Inc.*, 97 Wash. 2d. 929 (Wash. Sup. 1982). In the *Bernethy* case, a gun shop sold a gun to an intoxicated man who used the gun to kill his wife. Relying upon the Restatement (second) of Torts, Section 390 (1965),⁹ the court ruled that one who supplies directly or through a third person a gun or other weapon for the use of another whom the supplier knows or has reason to know to be likely, because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them. It will be left to the jury to decide whether the injury, *i.e.*, the intoxicated husband's subsequent shooting of his wife, fell within the ambit of that duty.

Although the foregoing cases should alert you to your responsibility to maintain control of your gun, an Arizona legal article has urged even greater responsibility for safeguarding firearms. In the legal article entitled Note, Strict Products Liability: Application to Gun Dealers Who Sell to Incompetent Purchasers, ARIZONA LAW REVIEW, Vol. 26, No. 4, 1994, the writer urged Arizona courts to apply "strict liability" to sellers or suppliers of guns to minors for injuries to third persons. In other words, the legal article urged that whenever someone is injured or killed by a minor with a gun, the victim could recover civil damages from the person who supplied the gun to the minor, even where no negligence was involved. This is not the law in Arizona, but you should be aware that some people have urged adoption of such extreme laws.

A civil case demonstrating the extent of your responsibility to keep your gun out of the hands of incompetents is *Walker v. McClanahan*, 16 Ariz. App. 525, 494 P.2d 725 (Ariz. App. 1972). In that case, the defendant and plaintiff had been drinking; the defendant handed the plaintiff a loaded handgun; the plaintiff took the gun into the back yard of the defendant's Scottsdale, Arizona residence and fired three rounds into the ground; the defendant asked the plaintiff to stop; the defendant returned inside the house and laid the gun on the kitchen countertop; and the gun discharged and the bullet struck the plaintiff in the face. Neither the plaintiff nor the defendant had any idea how the gun discharged or how the bullet struck plaintiff in face. The Court ruled that the case was controlled by the legal principal *res ipsa loquitur*. Under this principal, the plaintiff did not need to show specific facts to establish that defendant's negligence led to the plaintiff's injury. Since (1) the plaintiff did not have control of the gun at the

⁹ The "Restatement" is a collection of legal principals prepared by legal experts. Although the Restatement is not a statute, parts of the Restatement have been adopted by the Arizona courts as law in Arizona.

time of injury; and (2) a firearm is a dangerous instrumentality which imposes a duty to exercise extraordinary care or utmost care; (3) *res ipsa loquitur* creates an inference of negligence which can be accepted or rejected by the jury.

Some limits on extending liability for supplying a firearm used to commit a crime are discussed in *Bloxham v. Glock Inc.*, 203 Ariz. 271, 53 P.3d 196 (App. 2002). In that case, the Court of Appeals held that Manufacturers and sellers of firearms have no duty to a third party killed by the purchaser of a handgun. Significantly, the Court ruled that “foreseeability” alone does not dictate duty.

IX. GENERAL RULES

- A. **When carrying concealed, do not "advertise" that you are doing so.** Carrying a concealed firearm is not a macho game - it is a precious right and a grave responsibility. There are many people who detest or fear firearms. If someone with a rabid hatred of firearms sees you displaying your firearm, you can bet that you will be subjected to everything from spiteful stares and harassment to criminal complaints. **Keep your firearm out of sight, and respectfully decline requests to show it to others in any public setting.** The wisdom of this rule is highlighted by the law in states like Florida and Texas (not Arizona) and some foreign countries to the effect that displaying a lawfully concealed weapon is a criminal offense. In addition, concealment of your firearm gives you an important tactical edge if you are confronted with a life threatening situation. The average assailant does not expect his next victim to be carrying a firearm. The tactical advantage of surprise and the important one or two seconds that the surprise might buy you will be lost if your assailant knows you are armed.
- B. As noted earlier, generally an Arizona concealed-weapon permit does not grant you any right to carry a firearm, concealed or otherwise, in any other state. However, new CCW reciprocity laws may make your CCW permit good in another state. If you use your CCW permit to carry a concealed gun in another state that recognizes your permit, you will be responsible for following that state's laws regarding the carrying and use of firearms! Arizona law does not follow you to other states!
- C. Do not freely show your concealed firearm to friends and associates upon request. You risk accidental shootings, accidentally alarming or offending bystanders, accidentally committing assault or reckless endangerment, and a variety of other problems. Your instructor can give you examples.
- D. Remember, the success or failure of Arizona's concealed carry law depends, in large part, upon how you exercise this valuable right.

X. OTHER SOURCES FOR LAWS AFFECTING CONCEALED CARRY

For more information on the laws you have reviewed and other laws affecting your right to bear arms, read and study the book, "The Arizona Gun Owner's Guide" by Alan Korwin, 21st edition (Bloomfield Press, Phoenix). Because of the importance of this book, it is used as a text for most CCW courses. It is available in most book stores and from licensed firearms dealers. You should read this book, reread it and take the self-tests it contains. Mr. Korwin and Michael Anthony, the author of this treatise, have also compiled the federal gun laws in one book, entitled "Gun Laws of America," also available from Bloomfield Press.

XI. REVIEW OF LEGAL PRINCIPLES AND POSSIBLE TEST QUESTIONS

SAFETY

**INTERFACE WITH
LAW
ENFORCEMENT**

SAFETY

1. Five Basic Safety Rules
 - A. All firearms are considered loaded (never assume anything – check it)
 - B. Always point firearms in a safe direction (downrange, the ground, etc.), until on target and ready to fire
 - C. Always keep your trigger finger straight along the frame until on target and ready to fire
 - D. Always know your target and what's behind it (bystanders, traffic, etc.)
 - E. Maintain control of your firearm (if not in possession, lock it up)

2. Dry Firing and Cleaning
 - A. Unload the firearm in a safe manner
 - B. Place all ammo in a separate room
 - C. Visually and physically inspect the firearm to make sure it is unloaded
 - D. Plan to avoid interruptions (phone, door, etc.)
 - E. Aim the firearm at a bullet stopping backstop (block wall, dirt berm, etc.)

3. Storing Weapons
 - A. Educate all persons that might have access to a firearm
 - B. Check all firearms to make sure they are unloaded (look and feel)
 - C. Store in a safe/secure location
 - D. Store out of sight
 - E. Use additional safety devices (cable locks, padlocks, gun safes, etc.)
 - F. Never store or carry a cocked revolver

4. Range
 - A. Obey all range rules and the rangemaster/instructor
 - B. Stay focused and alert
 - C. Use eye and ear protection
 - D. Report unsafe acts
 - E. Anyone may call “cease fire”

INTERFACE WITH LAW ENFORCEMENT

Traffic Contacts

- a. Keep hands in plain view – avoid the appearance of being a threat. This is potentially a volatile situation.
- b. Advising the officer of the weapon and permit is not required but is recommended.
- c. Follow the officers instructions
 - i. Officer may temporarily separate the permit holder from the weapon.
 - ii. Officer may be comfortable with the permit holder retaining the weapon.
 - iii. DO NOT ARGUE WITH THE OFFICER – If necessary, file a complaint with the on duty supervisor of the officer's agency.

When Deadly Force Has Been Threatened Or Used

- a. Have a plan beforehand – be prepared!
- b. Remain calm.
- c. Call 911 as soon as possible – give details of your location and description.
- d. Remember the firearm safety rules and secure the weapon (no weapon in hand when the officers arrive).
- e. Remain alert – the suspect could still pose a threat.
- f. Disturb the scene as little as possible.
- g. Responding officers will not know the exact situation. When they arrive, show them your open hands and tell them whom you are. Follow their instructions.
- h. Be prepared to be detained while officers sort out the situation.
- i. Think about what you are going to say to investigators, if anything.

Assisting the Police

- a. Only in life threatening situations – use common sense.
- b. Do not surprise the officer (get officer's attention, no weapon in hand).
- c. Obtain permission/instructions from the officer first, if possible.
- d. Use only the force necessary.
- e. Be a good witness – remember details.
- f. Do not leave afterwards until told otherwise by involved officers.

Incidents With Business Owners or Other Prohibited Locations

- a. Don't argue or escalate the situation – businesses have the right to prohibit weapons.
- b. Leave and secure your weapon in a suitable location (some locations may be able to secure your weapon for you).
- c. If the police arrive, keep your open hands in plain view.
- d. Follow instructions from the police and/or business operators – permittee's can be arrested for trespassing if they don't.

8 HOUR LESSON PLAN AND TESTS

CONCEALED WEAPONS PERMIT PROGRAM LESSON PLAN

8-Hour Initial Class

Program Number XXXXXXXX

Date 072205

This lesson plan was developed by the CWPU with the assistance of the CCW Advisory Committee and designed for [new organization applicants](#) who require a lesson plan for submission to the CWPU. Use of this lesson plan is mandatory by all training organizations, effective August 11, 2005. The new 8-hour CCW course is actually a firearms safety course, designed to teach the students the basics of gun safety, marksmanship, maintenance and familiarization, as well as legal issues related to the use of deadly physical force. The 8-hour CCW course is not designed for or intended to teach advanced tactics or shooting techniques. Note: Each section of the lesson plan now has a minimum required training time.

A new organization applicant no longer needs to submit a copy of a lesson plan along with its application to become a Training Organization. Once approved, the organization will be sent a copy of the current AZ DPS lesson plan, four versions of the AZ DPS standardized test, an answer key and an answer sheet. The organization may use one or all test versions, at its discretion. It is mandatory that instructors spend at least 2.5 hours on the law and legal portion of this lesson plan. Instructors are required to thoroughly cover this topic. Do not read from the statutes, but know them well enough to discuss them in class. Use the [“Legal Issues Relating to the Use of Deadly Force”](#) , [ARS statutes](#) and information on the [CWPU website](#) as references. Important: Please tell students that these sources of information as well as this lesson plan are on the AZ DPS CWPU website.

Any information taught which is not listed in this lesson plan will require additional hours of training time beyond the mandatory 8 hours. For instance, including a one-hour block of instruction on tactical shooting techniques would require a CCW class 9 hours in length. The only exception is the use of brief videos or other audio/visual aids directly related to required topics. Under no circumstances will audio/visual aids dominate the training. Deviation from this or any other approved lesson plan is unacceptable and will result in the suspension and/or criminal prosecution of the instructor and organization. Deviations can also result in students having their applications rejected for a lack of training. A 10 minute break taken after every 50 minutes of instruction is acceptable (counts as one hour of instruction) and does not require special scheduling or permission. Lunch breaks do not count as training time. Fingerprinting and/or completing applications will not be performed during the 8-hour training period.

It is permissible to teach both the 2-hour renewal class and the related portion of the 8-hour class simultaneously. However, this will require the class be taught by a qualified renewal instructor and incorporation of the law/legal and safety portions from the renewal class into the 8-hour class lesson plan. Please ensure students receive the proper program number entry for their applications.

IMPORTANT - This lesson plan consists of ten sections. Section 1 will be covered first. Section 2 will be taught before students handle firearms or qualify on the range. The remaining sections may be taught in any order, based upon the needs of the instructor. Any or all sections may be taught on a range and the firing of handguns by students may be incorporated at the instructor's discretion.

I. Introduction (as appropriate) (15 mins)

- Welcome
- Introductions (Instructors/Students)
- CCW course and materials (*general information, i.e., basic firearms-safety course, taught to the lowest level of experience, includes legal issues, etc.*)
- Schedule
- Facilities
- Breaks
- Cell phones, pagers, etc.
- Other

Class Safety Briefing (*to be repeated as necessary throughout the class*): *The safety briefing below is a guide to assist the instructor with pertinent instructions and should be used as needed. Some instructions may not be applicable to the training and may be left out. Other instructions may be added at the instructor's discretion.*

- No loaded firearms are permitted in any training area unless specifically required by the instructor
- Firearms shall be inspected by the instructor before qualification and remain unloaded until told otherwise
- Eye and ear protection will be worn while on the firing line
- Firearms used for training purposes other than qualification on a range shall be unloaded and inspected by the instructor teaching the class (*If available, at least one student knowledgeable of firearms shall also inspect the firearm*)
- Students are expressly prohibited from being under the influence to any extent of alcoholic beverages or drugs which may affect judgment or coordination while attending this class
- No "horseplay" while in class or on the range
- Students will follow all commands given by the instructor
- When on the range, all firearms will be benched or holstered, unless told otherwise by the instructor
- The five safety rules shall be strictly adhered to at all times
- At the command of "cease-fire", all shooters will immediately stop firing, keep their firearms pointed downrange and listen for further instructions from the instructor. Anyone may yell cease-fire if they observe an unsafe act

- Violations of these rules may result your dismissal from the class
- Other (Appropriate clothing, drinks, snacks, first aid, etc.)

Class Objectives:

1. To allow students to carry concealed weapons after successfully completing an 8-hour course of instruction.
2. To inform students of the responsibility of firearms safety, use of deadly force, maintenance of firearms, proper mental conditioning, marksmanship and judgmental shooting situations, as required by law.
3. To display knowledge and proficiency of deadly force issues by passing an approved written test with a minimum score of 100 percent at the conclusion of the class. This requires a score of at least 70 percent on the initial test. Initial test scores below 70 percent fail the class.
4. To display shooting proficiency by firing a minimum of ten rounds of live ammunition (as defined by applicable administrative rules) for qualification and achieving a score of at least 70 percent.

II. SAFE HANDLING AND STORAGE OF FIREARMS (min 1 hr) *Recommendation: Give a brief informational statement about the use of handguns for self-defense, leading into the importance of firearms safety in general.*

A. The Five Firearms Safety Rules *(Stress the importance of knowing and following the safety rules).*

- All firearms are considered loaded (never assume anything – check it)
- Always point firearms in a safe direction (downrange, the ground, etc.), until on target and ready to fire
- Always keep your trigger finger straight along the frame until on target and ready to fire
- Always know your target and what's behind it (bystanders, traffic, etc.)
- Maintain control of your firearm (if not in possession, lock it up)

Remember - There is no such thing as an “accidental discharge” of a firearm, unless the weapon is defective. Firearms fire due to intent or carelessness.

B. Firearm storage devices (*use training aids*)

- Safety vs. accessibility
- Lockable boxes, cases and safes

C. Locking devices (*use training aids*)

- Safety vs. accessibility
- Racks
- Barrel locks
- Cable locks
- Trigger locks – not a preferred safety device

D. Training household members

- All family members should be familiar with firearms stored in the home and taught basic firearms safety
- Children should be taught not to handle a “found” firearm and to report it to a responsible adult (stop, don’t touch, leave the area, tell an adult)
- If appropriate, visitors should be told of the presence of loaded firearms in the home and cautioned against handling an unfamiliar firearm

E. Loaded firearms in the home

- *Discuss: Family members and visitors who are not familiar with the potential hazards of firearms are at risk should they encounter a loaded firearm in the home. Emphasize how many people have been shot while cleaning firearms or with supposedly “unloaded” firearms*

III. LEGAL ISSUES RELATING TO THE USE OF DEADLY FORCE (Mandatory 2.5 hours minimum)

A. Overview (Use the [“Legal Issues Relating to the Use of Deadly Force”](#) section of the *DPS Firearms-Safety Instructor Training Program Manual* as a reference for this module of instruction – references to the manual can be found after each applicable topic. **All CCW instructors must be familiar with this reference.** Do not attempt to read this reference in its entirety to your students. Briefly cover the required statutes and use the examples cited in each section of the reference material to better describe the meaning of the statute. Inform

your students that the reference is available on the AZ DPS CCW website at:

(<http://www.azdps.gov/ccw/default.asp>). Other valuable information includes [ARS Title 13.](#))

Inform your students that:

- Arizona law requires persons who wish to carry concealed weapons to receive initial and refresher training in order to obtain and renew a permit to carry concealed weapons for self-defense
- The legal issues are the most important because violations of the laws pertaining to the use of firearms can lead to imprisonment, fines and civil lawsuits
- A permit is valid for four years (five years if issued after 8-11-05) and then must be renewed
- It is the responsibility of the permit holder to renew the permit by attending a four hour renewal class (two hours after 8-11-05) and submitting an application within 90 days prior to or 60 days after expiration of the permit
- Effective **8-11-05** several new laws become effective:
 - Military personnel deployed overseas are provided 90 days to renew their permit following the end of the deployment. The permit is considered valid during this time frame, even though it may be expired, however, it is unlikely that other states will recognize an expired permit.
 - The submission of fingerprint cards is no longer required on the second or subsequent renewals submitted after 8-11-05, unless the permit holder allows the permit to expire, then the applicant must begin the process over by attending the initial class again. All renewal application packets must include a fingerprint card until 8-11-2009.
 - A permit holder cited or arrested for carrying a concealed weapon who did not have their permit in their possession at the time may now later present the permit to the court who will dismiss the charge.
 - Schools may now offer firearms classes that cover safety, history, marksmanship and competence. This is an elective, one semester course.

- The CWPU will issue a “certificate of firearms proficiency” to qualified retired law enforcement officers to enable them to carry concealed handguns nationwide. This requires annual AZ POST handgun qualification and passing a target discrimination course.
- Discuss places where firearms are prohibited or restricted (*see Handout A*)
- Briefly discuss criminal vs. civil law (Sections I & II)

B. Laws pertaining to firearms and deadly physical force (*Reminder, in some chapters only certain statutes must be addressed and they are given in italics. Remind students that Michael Anthony’s legal reference manual is on the AZ DPS website and they may thoroughly study this material at their convenience*)

1. Briefly discuss ARS Title 13, Chapter 11, Homicide (Section III.A) 13-1102, 1103.
2. Briefly discuss ARS Title 13, Chapter 12, Assault and Related Offenses (Section III.B) 13-1201, 1202, 1203, 1204.
3. Briefly discuss ARS Title 13, Chapter 15, Criminal Trespass and Burglary (Section III.C) *Cover aspects that pertain to CCW permit holders – see the legal reference.*
4. Briefly discuss ARS Title 13, Chapter 29, Offenses Against Public Order – Disorderly Conduct (Section III.D) 2904.A.6 & *discuss how 2911 could affect persons with weapons on school grounds.*
5. Briefly discuss ARS Title 13, Chapter 31 Weapons and Explosives (Section III.E) 13-3101, 3102, 3107, 3112. *Information that does not pertain to carrying deadly and/or concealed weapons may be omitted.*
6. Briefly discuss Civil Laws Impacting the Use of Firearms (Section IV) *Overview of Intentional Acts and Negligence.*
7. **Thoroughly discuss ARS Title 13, Chapter 4, Justification (Section V) *All relevant subsections to include 401, 402.B.2, 403.6, 404, 405, 406, 407, 408, 411, 412, 413 & 417. Subsections that do not pertain to average citizens carrying concealed weapons may be omitted.* This chapter is the most crucial section of the law and legal training requirement and all instructors must be thoroughly knowledgeable of this section of the legal text (Section V).**
8. Briefly discuss ARS Title 4, Chapter 2 (4-244.29) (Patrons may not bring firearms into commercial establishments that serve alcohol for consumption on the

premises)

9. Briefly discuss other applicable laws (Section VII) 13-3601, 3602 (*only how these sections pertain to permit holders*) Section VII.A.4 & 18 USC 922 – *Federal Gun Free School Zone overview (only provide general awareness of this federal law, direct students with in-depth questions to consult an attorney)* Section VII.J.
10. Reciprocity and recognition of permits (see Handout B. Briefly discuss this subsection. Key point: *Be familiar with the laws of other states you visit.*)
 - ARS 13-3112.T - V
 - Reciprocal agreements with other states
 - Recognition of other states permits in Arizona
11. Request students visit the AZ DPS CCW website at:
<http://www.azdps.gov/ccw/default.asp>.

C. Contact with law enforcement **(thoroughly discuss)**

- Permit holders are not required to inform officers they are in possession of a permit and a concealed weapon unless asked by the officer, however, it is strongly recommended the permit holder volunteer this information to avoid “surprises.” (Section VII.A.1)
- Approaching law enforcement during volatile situations can further aggravate the situation. Do not approach officers without first getting their attention and requesting permission. (Section VII.A.2)
- Officers are authorized to require permit holders in possession of a concealed weapon and a permit to temporarily surrender the weapon for the officers safety (Section VII.A.3)
- *Instructors, please review the “Interface with Law Enforcement” section of the CWPU Firearm-Safety Instructor Program book. This will provide you with additional information on this topic you should review with your students.*

IV. FIREARM CARE AND MAINTENANCE (min 15 mins) *Discuss the importance of clean and functional firearms that will be used for self-defense. Also stress the importance of ensuring the firearm is unloaded before cleaning. Briefly cover the following maintenance topics:*

- A. Read the owner's manual (Many are available on the internet or by corresponding with the manufacturer)
- B. Safety (unload in one room, clean in another, no ammunition present)
- C. Field Stripping (as applicable, read owner's manual)
- D. Magazines (cleaning, check for defects, no lubricants)
- E. Cleaning and lubrication (proper equipment, solvents & lubricants, how often)
- F. Function check before loading the firearm to insure the weapon was properly reassembled and operating correctly

V. MENTAL CONDITIONING FOR THE USE OF DEADLY FORCE (min 1 hr)

A. Modes of Awareness

- White - No perceived threat, completely unaware (watching TV, daydreaming, sleeping)
- Yellow - Functioning in public, aware of surroundings (driving to work, shopping, conversation)
- Orange - Alert, perceived threat or situation (someone or something grabs your attention, possible danger)
- Red - Focused, reacting to actual threat (someone is actually threatening or attacking you and you are responding)

B. Visualization Techniques (*Emphasize the importance of these points*)

- Use "what if" scenarios to prepare an appropriate reaction
- The way you prepare and train will be the way you respond in a high stress situation
- You will not likely have time to create a plan once the attacker engages you

1. The Confrontation (The fight is on – active defensive measures)

- Appropriate level of defensive force. Remember: Not every attack or threat is the same. In each case, there may be circumstances present that require an immediate and violent reaction by a person defending them self (or someone

else) from the threat of serious bodily injury or death. If possible, try to consider:

- What is the aggressor doing? (Demeanor and actions - watch the hands, body language)
- What weapons, if any, does the aggressor possess? (Pipe, knife, gun, rock, stick?)
- Is threatening deadly physical force justified and the best option?
- Non-lethal weapons (If an option – mace, stun guns, etc.)
- Is using deadly physical force justified and the best option?
- Do you have the opportunity to draw your handgun?
- How close is the aggressor? (In your face vs. 5-20 feet away)
- Can they reach your handgun?
- After drawing, should I keep my handgun in close or extend my arms into a shooting position?
 - Never give up or surrender your weapon once the fight is on – it could cost you your life
 - Use only the force necessary to stop the attack and be prepared to resume the use of force, if needed
 - Be mentally prepared if injured – many people have died from non-lethal wounds because of shock
 - Firing (Expectations, wounding the attacker, blood, injury, death)

2. If Deadly Physical Force has been used

- Misconceptions (Real life vs. movies, immediate death, endless supply of bullets, etc.)
- Did you make a plan? (What are you going to do now?)
- Injuries to attacker, bystander and/or self (first aid?)
- 911 – Call immediately, don't hang up
- Don't disturb the scene – remember the five safety rules
- Arrival of the police (Secure the handgun, empty hands)
- Investigation (Crime scene, confiscation of the handgun as evidence, attorney, police interviews, statements)
- Be prepared to be detained after a deadly force incident

3. Aftereffects

- Common psychological reaction pattern
 - Elation
 - Revulsion
 - Remorse
 - Self-Doubt
 - Acceptance
- Common physical & psychological reactions
 - Adrenaline rush, excitability, sleeplessness (may last for days)
 - Depression, fatigue (may last for days)
 - Upsetting memories such as images or thoughts about the trauma
 - Feeling as if the trauma is happening again (flashbacks)
 - Bad dreams and nightmares
 - Anxiety or fear, feeling in danger again

VI. JUDGMENTAL SHOOTING (min 30mins)

- Discuss and/or practice at least three common shoot/no shoot situations (*Situational questions, handouts, slides, videos, reenactments, paper targets, paintball, Simunitions, FATS, Rangemaster 2000, etc.*)
- Student must be able to determine the threat and appropriate action
- *Remind them: A handgun is a tool of last resort*

VII. FIREARM MANIPULATION, MARKSMANSHIP AND PRACTICE (min 1 hr) ***Recommend this section be taught on the range and the students be allowed to fire practice rounds, at the instructors discretion***

Instructor tip: For the purposes of shooting instruction, a person is vertically divided in half, with one side known as the “firing side” (sometimes known as the “shooting or strong side”) and the other the “support side.” This allows instructors to give one command to multiple students on the firing line without differentiating between right handed shooters and left handed shooters. The firing side is determined by which hand the shooter prefers to hold the handgun. If it were the right hand, then the right side of that person would be known as the firing side and the left side of the person would be the support side. The instructor can now call out commands to direct movement using terms such as “adjust your support hand”, or

"move your firing side foot forward." Remember: The firing hand primarily maintains a firing grip on a handgun and the support hand is used to fulfill several needs to include supporting the firing hand, reloading, cocking, etc.

Handgun Recognition and Manipulation

Stress the importance of being able to 1) recognize the different types of handguns and their condition, 2) operate the various functions of that firearm through familiarization and 3) safely handle the firearm and basic etiquette. Ensure students know how to operate their handgun safely to include loading, unloading, correct ammunition and firing.

- A. Isosceles, Weaver and Modified Weaver positions
- B. Grip (*Discuss two hands vs. one hand*)
 - Flashlights
 - Using the firing hand or support hand only
- C. Sight Alignment
 - Sight picture
 - Dominant eye
 - Sight alignment (front and rear sights, eye focused on front sight)
 - Point shooting
- D. Trigger
 - Trigger finger straight along the frame until on target and ready to fire
 - Steady pressure vs. anticipation
 - Breathing
- E. Loading and unloading (**Note on Subsection E:** *Discuss as needed, depending on the types of weapons your students possess and their basic knowledge of firearms. If this section is taught on the range, we recommend a sequence of loading, firing a few rounds and then unloading until students appear relatively comfortable with the process. Remind students with semi-autos that simply removing the magazine does not mean the weapon is unloaded – the slide must be cycled and the chamber checked.*)

1. Single/Double Action Revolvers

a. Loading

- Activate the cylinder release (single action: open loading port)
- Handgun may be placed in the shooter's support hand and loaded with the firing hand
- Swing open cylinder
- Place rounds into cylinder
- Close cylinder (single action: close loading port)

b. Unloading

- Activate the cylinder release (single action: open loading port)
- Swing open cylinder
- Handgun may be placed in the shooter's support hand and loaded with the firing hand
- Push extractor rod to the rear (single action: align chamber first)
- Remove rounds/cases
- Inspect each chamber to insure they are empty
- Close cylinder (single action: close loading port)

2. Semiautomatics

a. Loading

- Methods for inserting rounds into magazine
- Insert magazine into magazine well and lock in place
- Using the support hand, rack slide to the rear and release (do not ride forward)
- De-cock (single action: engage safety)

b. Unloading

- Press magazine release and remove magazine (place in your pocket or pouch)
- Kneel down, rack slide to the rear and remove round from chamber (Kneel so round has less distance to fall, reducing the chance of igniting the primer or damaging the round)
- Lock slide to the rear
- Look and feel inside the chamber to insure round ejected

- Pull slide to the rear to disengage the slide stop and release the slide
- De-cock (as needed)

F. Firing

- Stance
- Grip
- Aiming/sight alignment
- Trigger press
- Breathing
- Squib rounds, misfires and malfunctions (Squib – underpowered; misfire – delayed or dud)
- Recoil
- Recovery

G. Holsters and Carry Methods (*Discuss various types of holsters and other carry methods such as purses, briefcases, fanny packs, etc.*)

VIII. WRITTEN TEST (30 mins)

- 20 questions, with an initial score of at least 70 percent, using any version of the AZ DPS standardized test (Versions 1.1 – 4.1, effective 081105).
- Prior to the end of class, review and retest all incorrect answers until a final score of 100% is achieved. Retest(s) may be either written or verbal, group or individual.

IX. QUALIFICATION (1 hour - range)

- Minimum standard: At least 10 rounds with a firearm and live ammunition, no time limit (5 rds at 5 yards and 5 rds at 10 yards). Ammunition shall consist of a case, primer, powder and a lead or lead-jacketed bullet. Use of any other ammunition requires permission from the CWPU. Simulated, marking and/or rubber projectiles are prohibited for use during qualification. Qualification may consist of firing more rounds than the minimum standard at longer ranges than those given, at the discretion of the training organization. Students should be drawing and firing from a holster suitable for concealed carry, but this is not mandatory.
- NRA TQ-15, TQ-19 or equivalent, i.e., secondary scoring ring equal to 14 x 16, or less.

Shots outside of the 2nd scoring ring will not count.

C. 70 percent hits within the secondary scoring ring are required for a passing score.

X. OVERALL EVALUATION (Pass/Fail Student) Has the student satisfactorily demonstrated sufficient knowledge and proficiency with all required topics? Are you, as a firearms instructor, willing to certify this person? If so, complete the application by adding the required information on the back. Ensure that you enter the correct numbers on the application or the application will be returned to your student by the CWPU.

Handout A

Concealed Weapon Permit Unit

P.O. Box 6488
Phoenix, AZ 85005
Metro Phoenix: (602) 256-6280
Outside Metro Phoenix: (800) 256-6280
Fax: (602) 223-2928

Web page: www.azdps.gov/ccw/default.asp

Email: ccw@azdps.gov

Michael Anthony's "LEGAL ISSUES RELATING TO THE USE OF DEADLY FORCE" webpage at www.dps.state.az.us/ccw/legal.asp

GENERALLY, MISCONDUCT INVOLVING WEAPONS (ARS 13-3102.A.1 and A.2) DOES NOT APPLY TO:

- A deadly weapon which is immediately accessible **and** carried openly by a means that makes it obvious to casual observers the person is carrying a deadly weapon ("open carry")
- A person in his home, on his business premises or on real property owned or leased by that person
- Within a means of transportation, a deadly weapon that is not immediately accessible **or** if it is clearly visible to casual observers **or** if it is carried in a container that makes it obvious the person is transporting a deadly weapon
- A pocketknife (typically a folding knife with a blade less than 4 inches)
- A peace officer or any person summoned by any peace officer to assist while actually in the performance of official duties
- A warden, deputy warden or correctional officer of the state department of corrections
- A member of the military forces of the United States or of any state of the United States in the performance of official duties
- A person specifically licensed, authorized or permitted (CCW permit) pursuant to a statute of this state or of the United States. ***Permit holders are subject to the below listed restrictions***
- Active/retired law enforcement officers carrying under the Law Enforcement Officer Safety Act of 2004 (LEOSA)

FIREARMS ARE PROHIBITED OR RESTRICTED IN THE FOLLOWING PLACES (with or without a permit)

- Businesses serving alcohol for consumption on the premises
- Polling places on election days
- School grounds (**some exceptions – see below**)
- Commercial nuclear generating stations
- Military installations
- Indian reservations (check w/tribe)
- Game preserves
- National parks
- Correctional facilities
- Federal buildings
- Airports (in or beyond security checkpoints)
- Where federal, state or local laws prohibit weapons
- Public/Private establishments or events when asked by the operator/sponsor/agent. Persons who refuse to leave and secure their weapon are trespassing and can be cited or arrested for 13-1502A1 (C3M) or 13-1503A (C2M), depending on the location

School exceptions (Concealed or not):

- You are an adult in a vehicle and the firearm is unloaded before entering school grounds. Furthermore, if you must exit your vehicle, the firearm must remain unloaded and be secured (locked) within the vehicle, out of plain view (**ARS 13-3102.I.1**) Use caution and common sense if you must exit the vehicle with a firearm to secure it in the trunk (avoid causing a potentially serious disturbance)
- You are an adult attending a firearms related class (hunter/safety) or participating in a school program that requires you to bring or possess a firearm and the training or event was scheduled and approved by school administrators (**ARS 13-3102.H & I.2**). This exception also applies to a juvenile accompanied by a parent, grandparent, legal guardian or a certified hunter/firearms safety officer acting with the permission of a parent or guardian (**ARS 13-3111.A**). The firearm will be unloaded before entering school grounds and should be placed in a case to avoid causing a potentially serious disturbance
- Additionally, designated employees of a school may order a person off of school property if that person is believed to be interfering with school operations. School boards may also enact specific and more restrictive rules governing firearms and deadly weapons on school grounds (**ARS 13-2911**). Determine the what the rules of a school are before attempting to enter school grounds with a firearm

PERMIT HOLDER REQUIREMENTS

- A qualified person must have the permit in possession when carrying a concealed weapon
- The permit must be presented to any law enforcement officer **upon request**, along with a driver's license, military ID, state ID card or passport (if carrying a concealed weapon)

- Return altered, defaced, illegible, mutilated, suspended and/or revoked permits to the AZ DPS CWPU
- Notify the DPS CWPU if you have been arrested for any felony or domestic violence misdemeanor
- Renew permit after **five years** by attending a two-hour renewal class. Submit application packet no more than 90 days in advance
- Your Arizona permit is valid in some other states; call the state in question to verify reciprocity or recognition.

Reciprocity and Recognition of Permits

Some states recognize the CCW permit issued by another state – check with that state before carrying there to verify to validity of your permit. The AZ DPS CWPU maintains a webpage that lists state permits that are valid in Arizona and what states recognize the Arizona permit. Please note that these states are subject to change, hence, the importance of contacting that state before carrying there.

See the AZ DPS CCW Unit website for a list of recognized and reciprocal states at:

<http://www.azdps.gov/ccw/ recip.asp>

Pursuant to ARS 13-3112.T, the Arizona Department of Public Safety will enter into reciprocal agreements with other states whose permit requirements are substantially similar to Arizona's requirements.

ARS 13-3112.U authorizes recognition of another state's permit that meets the following requirements:

The person:

- is a resident of another state and temporarily visiting Arizona
- is legally in Arizona
- presents upon law enforcement request a valid permit issued by another state if the issuing authority for that state:
 - issues a permit with a printed expiration date
 - has disqualification, suspension and revocation requirements for permits
 - requires that an applicant for the permit meets the following conditions:
 - is twenty-one years of age or older
 - submits to a criminal history record check
 - is not a prohibited firearm possessor pursuant to federal law
 - completes a firearms safety program
- is not a convicted felon, regardless of whether that person has had their rights restored and their conviction expunged, set aside or vacated

Residents of other states may not legally carry a concealed weapon in Arizona unless they are in possession of a permit issued by a recognized or reciprocal state. Arizona residents are required to obtain an Arizona permit to carry concealed weapons in this state.

2 HOUR RENEWAL LESSON PLAN

CONCEALED WEAPONS PERMIT PROGRAM LESSON PLAN RENEWAL

2-Hour Renewal Class

Program Number XXXXXXXX

Date 072005

Instructors:

This lesson plan was developed by the CWPU with the assistance of the CCW Advisory Committee and is the only training program approved for Arizona CCW permit renewals. Use of this lesson plan is mandatory and it may not be modified. The CCW Renewal Course is a refresher class primarily focusing on legal issues related to the use of deadly physical force, firearms safety and qualification. The CCW Renewal course is not designed for or intended to teach advanced tactics or shooting techniques.

This lesson plan requires a minimum of two hours of instruction. This does not necessarily mean the class will be completed in two consecutive hours. Instructors may add additional training time at their discretion.

Organizations and instructors teaching the renewal course must be certified by the CWPU before conducting classes by completing the DPS Firearm-Safety Instructor course before they may perform training.

Become knowledgeable of Chapter 4 of Title 13, Justification. Do not read from the statutes, but know them well enough to discuss them in class. Use the [“Legal Issues Relating to the Use of Deadly Force” text](#), ARS statutes and information on the [CWPU website](#) as references. Other pertinent references may also be used.

Any topic that is not listed in this lesson plan will require additional training time beyond the mandatory 2 hours. For instance, if you wish to teach a one-hour block of instruction on tactical shooting techniques, your class will be 3 hours in length, with the understanding that this hour does not count as part of the renewal class. With the exception of how the introduction portion is presented, instructors may not deviate from this lesson plan. Significant deviation from this or any other approved lesson plan is unacceptable and may result in the suspension and/or criminal prosecution of the instructor and organization. Additionally, deviations can also result in student applications being rejected for insufficient training.

It is permissible to teach both the 2-hour renewal class and the related portions of the 8-hour class simultaneously, provided each section of the renewal lesson plan is covered. Instructors teaching a combined class must have completed the 8-hour DPS Firearms Safety Instructor Course first. Please ensure that your students receive the proper program number entry on their applications.

IMPORTANT - This lesson plan consists of seven sections. **Sections I, II and III will be covered first.** The remaining sections may be taught in different order, based upon the needs of the instructor.

There is no written test for the 2-hour renewal course.

I. INTRODUCTION *(suggested) (5 mins)*

- Welcome
- Introductions (Instructors/Students)
- CCW renewal course and materials (general information, i.e., basic firearms-safety course, taught to the lowest level of experience, includes legal issues, etc.)
- Schedule
- Facilities
- Breaks
- Cell phones, pagers, etc.
- Other

Class Safety Briefing (to be repeated as necessary throughout the class): *The safety briefing below is a guide to assist the instructor with pertinent instructions and should be used as needed. Some instructions may not be applicable to the training and may be left out. Other instructions may be added at the instructor's discretion.*

- No loaded firearms are permitted in any training area unless specifically required by the instructor
- Firearms shall be inspected by the instructor before qualification and remain unloaded until told otherwise
- Eye and ear protection will be worn while on the firing line
- Firearms used for training purposes other than qualification on a range shall be unloaded and inspected by the instructor teaching the class (If available, at least one student knowledgeable of firearms shall also inspect the firearm)
- Students are expressly prohibited from being under the influence to any extent of alcoholic beverages or drugs which may affect judgment or coordination while attending this class
- No "horseplay" while in class or on the range
- Students will follow all commands given by the instructor
- When on the range, all firearms will be benched or holstered, unless told otherwise by the instructor
- The five safety rules shall be strictly adhered to at all times
- At the command of "cease-fire", all shooters will immediately stop firing, keep their weapons pointed downrange and listen for further instructions from the instructor. Anyone may yell cease-fire if they observe an unsafe act
- Violations of these rules may result your dismissal from the class

- Other (Appropriate clothing, drinks, snacks, first aid, etc.)

II. LEARNING OBJECTIVES

- To allow citizens to continue to carry concealed weapons after successfully completing a 2-hour refresher course of instruction.
- To briefly inform citizens of the responsibility of using deadly force as justified by law and to review basic firearms safety.
- To display shooting proficiency by firing a minimum of ten live rounds for qualification and achieving a score of at least 70 percent.

III. FIREARMS SAFETY REVIEW (15 mins)

- The Five Firearms Safety Rules
 - All guns are considered loaded
 - Always point guns in a safe direction
 - Keep your trigger finger along the frame until on target and ready to fire
 - Know your target and what's behind it
 - Maintain control of your firearm (if not in possession, lock it up)
- Safety in the home
 - Educate family members
 - Store in a safe location
 - Locking devices and safes
- Safety outside the home
 - Retention (holsters, purses, vehicles, other devices)
 - Awareness

IV. LEGAL ISSUES RELATING TO THE USE OF DEADLY FORCE (40 mins)

CCW Instructors must be familiar with the [“Legal Issues Relating to the Use of Deadly Force”](#) text from the DPS Firearms-Safety Instructor Training Program Manual. Use this text as a reference for this module of instruction.

- Review all relevant subsections of ARS Title 13, Chapter 4, Justification (Section V).
Cover subsections 401, 402.B.2, 403.6, 404, 405, 406, 407, 408, 411, 412, 413 & 417.
Subsections that do not pertain to average citizens carrying concealed weapons may be

omitted. This chapter is the most crucial section of the law and legal training requirement and all instructors must be thoroughly knowledgeable of this section of the legal text (Section V).

- B. Criminal law updates concerning use of deadly force and firearms (to be provided by the CWPU as applicable)
- C. Handout Appendix A
- D. Advise the students of:
 - The AZ DPS CCW website <http://www.azdps.gov/ccw/default.asp>
 - Michael Anthony's "LEGAL ISSUES RELATING TO THE USE OF DEADLY FORCE" webpage at www.dps.state.az.us/ccw/legal.asp

V. MENTAL CONDITIONING (30 mins)

- A. Visualization Techniques
 - Stress the importance of using "what if" scenarios to prepare for the unexpected threat
 - The way you prepare and train will be the way you respond in a high stress situation
 - You will not likely have time to create a plan once the attacker engages you
- B. If Deadly Physical Force has been used – Call 911 immediately, follow their instructions
- C. Discuss at least three different shoot/no shoot situations

VI. FIREARM MANIPULATION, MARKSMANSHIP AND RANGE QUALIFICATION (30 mins)

Review:

- Stance
- Grip
- Aiming/sight alignment
- Trigger press
- Breathing
- Firing
- Squib rounds, misfires and malfunctions (Squib – underpowered; misfire –

delayed or dud)

- Recoil
- Recovery

Qualification

A. Minimum standard: At least 10 rounds with a firearm and live ammunition, no time limit (5 rds at 5 yards and 5 rds at 10 yards). Ammunition shall consist of a case, primer, powder and a lead or lead-jacketed bullet. Use of any other ammunition requires permission from the CWPU. Simulated, marking and/or rubber projectiles are prohibited. Qualification may consist of firing more rounds than the minimum standard at longer ranges than those given, at the discretion of the organization. Students should be drawing and firing from a holster they intend on using to carry their handgun with, but this is not mandatory.

B. NRA TQ-15, TQ-19 or equivalent, i.e., secondary scoring ring equal to 14 x 16, or less. Shots outside of the 2nd scoring ring will not count.

C. 70 percent hits within the scoring area are required for a passing score.

VII. OVERALL EVALUATION (Pass/Fail Student) Has the student satisfactorily demonstrated sufficient knowledge and proficiency with all required topics?

Handout A

Concealed Weapon Permit Unit

P.O. Box 6488
Phoenix, AZ 85005
Metro Phoenix: (602) 256-6280
Outside Metro Phoenix: (800) 256-6280
Fax: (602) 223-2928

Web page: www.azdps.gov/ccw/default.asp

Email: ccw@azdps.gov

Michael Anthony's "LEGAL ISSUES RELATING TO THE USE OF DEADLY FORCE" webpage at www.dps.state.az.us/ccw/legal.asp

GENERALLY, MISCONDUCT INVOLVING WEAPONS (ARS 13-3102.A.1 and A.2) DOES NOT APPLY TO:

- A deadly weapon which is immediately accessible **and** carried openly by a means that makes it obvious to casual observers the person is carrying a deadly weapon ("open carry")
- A person in his home, on his business premises or on real property owned or leased by that person
- Within a means of transportation, a deadly weapon that is not immediately accessible **or** if it is clearly visible to casual observers **or** if it is carried in a container that makes it obvious the person is transporting a deadly weapon
- A pocketknife (typically a folding knife with a blade less than 4 inches)
- A peace officer or any person summoned by any peace officer to assist while actually in the performance of official duties
- A warden, deputy warden or correctional officer of the state department of corrections
- A member of the military forces of the United States or of any state of the United States in the performance of official duties
- A person specifically licensed, authorized or permitted (ccw permit) pursuant to a statute of this state or of the United States. ***Permit holders are subject to the below listed restrictions***
- Active/retired law enforcement officers carrying under the Law Enforcement Officer Safety Act of 2004 (LEOSA)

FIREARMS ARE PROHIBITED OR RESTRICTED IN THE FOLLOWING PLACES (with or without a permit)

- Businesses serving alcohol for consumption on the premises
- Polling places on election days
- School grounds (**some exceptions – see below**)
- Commercial nuclear generating stations
- Military installations
- Indian reservations (check w/tribe)
- Game preserves
- National parks
- Correctional facilities
- Federal buildings
- Airports (in or beyond security checkpoints)
- Where federal, state or local laws prohibit weapons
- Public/Private establishments or events when asked by the operator/sponsor/agent. Persons who refuse to leave and secure their weapon are trespassing and can be cited or arrested for 13-1502A1 (C3M) or 13-1503A (C2M), depending on the location

School exceptions (Concealed or not):

- You are an adult in a vehicle and the firearm is unloaded before entering school grounds. Furthermore, if you must exit your vehicle, the firearm must remain unloaded and be secured (locked) within the vehicle, out of plain view (**ARS 13-3102.I.1**) Use caution and common sense if you must exit the vehicle with a firearm to secure it in the trunk (avoid causing a potentially serious disturbance)
- You are an adult attending a firearms related class (hunter/safety) or participating in a school program that requires you to bring or possess a firearm and the training or event was scheduled and approved by school administrators (**ARS 13-3102.H & I.2**). This exception also applies to a juvenile accompanied by a parent, grandparent, legal guardian or a certified hunter/firearms safety officer acting with the permission of a parent or guardian (**ARS 13-3111.A**). The firearm will be unloaded before entering school grounds and should be placed in a case to avoid causing a potentially serious disturbance
- Additionally, designated employees of a school may order a person off of school property if that person is believed to be interfering with school operations. School boards may also enact specific and more restrictive rules governing firearms and deadly weapons on school grounds (**ARS 13-2911**). Determine the what the rules of a school are before attempting to enter school grounds with a firearm

PERMIT HOLDER REQUIREMENTS

- A qualified person must have the permit in possession when carrying a concealed weapon
- The permit must be presented to any law enforcement officer **upon request**, along with a driver's license, military ID, state

ID card or passport (if carrying a concealed weapon)

- Return altered, defaced, illegible, mutilated, suspended and/or revoked permits to the AZ DPS CWPU
- Notify the DPS CWPU if you have been arrested for any felony or domestic violence misdemeanor
- Renew permit after **five years** by attending a two-hour renewal class. Submit application packet no more than 90 days in advance
- Your Arizona permit is valid in some other states; call the state in question to verify reciprocity or recognition.

Reciprocity and Recognition of Permits

Some states recognize the CCW permit issued by another state – check with that state before carrying there to verify the validity of your permit. The AZ DPS CWPU maintains a webpage that lists state permits that are valid in Arizona and what states recognize the Arizona permit. Please note that these states are subject to change, hence, the importance of contacting that state before carrying there.

See the AZ DPS CCW Unit website for a list of recognized and reciprocal states at:

<http://www.dps.state.az.us/ccw/recv.asp>

Pursuant to ARS 13-3112.T, the Arizona Department of Public Safety will enter into reciprocal agreements with other states whose permit requirements are substantially similar to Arizona's requirements.

ARS 13-3112.U authorizes recognition of another state's permit that meets the following requirements:

The person:

- is a resident of another state and temporarily visiting Arizona
- is legally in Arizona
- presents upon law enforcement request a valid permit issued by another state if the issuing authority for that state:
 - issues a permit with a printed expiration date
 - has disqualification, suspension and revocation requirements for permits
 - requires that an applicant for the permit meets the following conditions:
 - is twenty-one years of age or older
 - submits to a criminal history record check
 - is not a prohibited firearm possessor pursuant to federal law
 - completes a firearms safety program
 - is not a convicted felon, regardless of whether that person has had their rights restored and their conviction expunged, set aside or vacated

Residents of other states may not legally carry a concealed weapon in Arizona unless they are in possession of a permit issued by a recognized or reciprocal state. Arizona residents are required to obtain an Arizona permit to carry concealed weapons in this state.

THE LAW ENFORCEMENT OFFICER SAFETY ACT & APPLICATION PROCESS

H.R. 218, the “Law Enforcement Officers’ Safety Act”

On July 7, 2004, the United States Senate passed H.R. 218, the “Law Enforcement Officers’ Safety Act” by unanimous consent and was subsequently signed by President George W. Bush. The bill exempts qualified active and retired law enforcement officers from select local and State prohibitions on the carrying of concealed firearms. It does not provide police officer liability protection, nor does it completely exempt active or retired officers from all state laws regarding carrying concealed firearms.

On August 11, 2005, Arizona HB 2450 takes effect which will allow the CWPU to issue a "Certificate of Firearms Proficiency" to qualified retired law enforcement officer applicants. Retired officers will need to qualify with the type of firearm they wish to carry (pistol and/or revolver) and pass a target discrimination or judgmental shooting evaluation, as selected by the instructor. Applicants must qualify through an Arizona CCW instructor who is also an AZPOST certified firearms instructor. The instructor will provide the applicant with an application that must be filled out and submitted to the CWPU, along with a letter from the applicant's agency, a photocopy of the retired officer's law enforcement officer credentials and a \$20 fee. The fee must be submitted as a money order, cashiers check or a certified check. Upon receipt of all required documents, the CWPU will issue the certificate, similarly like a CCW permit.

Firearm qualification will consist of standard AZPOST requirements (50 rd course, ranges of 25, 15, 7 and 3 yards, min passing score is 210). The TQ 15, TQ 19 or TQ 21 targets may be used. AZPOST's firearms qualification and judgmental shooting course may be viewed on the CWPU website at the LEO Safety Act page.

Judgmental shooting and target discrimination evaluations can be accomplished by a variety of approved means to include the use of FATS/Range2000 units, "friend or foe" targets, video scenarios, etc. Selection of the means will be determined by the instructor.

Required application documents include: a completed application signed by the instructor, a photocopy of the applicant's retired credentials, a form letter from the agency the officer retired from and a \$20 fee. The fee must be submitted as a money order, cashiers check or a certified check. Fingerprint cards will not be submitted. The form letter is available on the CWPU website on the law enforcement officer training exemption webpage.

The agency letter must include: a statement that specifically states the applicant meets the requirements of a qualified retired law enforcement officer pursuant to 18 USC 926C(c). The letter shall be submitted on the agency's letterhead and will also include the applicant's name, position, rank, employee or badge number, dates of employment, retired status, and the name of the agency's chief, designee or other point of contact and phone number within that agency's human resources or personnel department who can verify the applicant's employment status. If the letter fails to clearly define the applicant's eligibility, the Department shall require or allow the applicant to produce other evidence of eligibility. The letter will not be required for subsequent certificate applications. The CWPU has devised a form letter to be used for both CCW and Certificate applicants.

Certificates are valid for one year, beginning from the date the qualification was completed. Certificates are not CCW permits; they are simply a documentation of training/qualification that must be carried along with the retired officer's credentials when carrying a concealed firearm. CCW permits **do not** substitute for this document.

Nothing precludes individual law enforcement agencies from qualifying their own retirees and issuing their own credentials with the required information.

For information on obtaining a CCW permit, see [Law Enforcement Training Exemptions for a CCW Permit](#) on the CWPU website.

Instructor Eligibility

Due to the verbiage of the federal law, each state is required to follow state police officer firearm certification requirements. In this state, Arizona Peace Officer Standards and Training (AZPOST) rules apply.

Instructors must meet all of the following prerequisites:

Active, retired or reserve Arizona Peace Officer Standards & Training certified firearms instructor **and** An Arizona CCW instructor teaching for an authorized AZ CCW training organization (this is a CWPU requirement)

CCW instructors can not become an AZPOST certified firearms instructor unless they:

- are an active duty or reserve AZPOST certified peace officer;
- have been a peace officer for at least two years;
- have completed the AZPOST general instructor course;
- have completed the AZPOST firearms instructor course;
- maintain competency and proficiency **and**
- have not had AZPOST certification suspended or revoked

Note: Retired AZPOST certified peace officers must have been certified AZPOST firearms instructors prior to retirement - there are no provisions to obtain this certification unless the retiree becomes a reserve peace officer and completes the required training. **Civilians are ineligible unless they become reserve peace officers and complete AZPOST's requirements to become a firearms instructor.**

Frequently Asked Questions (FAQs) about H.R. 218:

Who is eligible to carry concealed firearms under this legislation?

Qualified law enforcement officers employed by or retired from a local, State or Federal law enforcement agency.

A “qualified active law enforcement officer” is defined as an employee of a government agency who:

- is authorized by law to engage in or supervise the prevention, detection, investigation, prosecution or the incarceration of any person for any violation of law;
- has statutory powers of arrest;
- is authorized by the agency to carry a firearm;
- is not the subject of any disciplinary action by the agency;
- meets the standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- is not prohibited by Federal law from possessing a firearm. Qualified active law enforcement officers must carry the photographic identification issued by the agency for which they are employed.

If you are an active duty law enforcement officer with any local, State or Federal governmental agency and you meet all of the requirements above, you may carry a concealed firearm under the provisions set out in the bill without obtaining a certificate of firearms proficiency.

A “qualified retired law enforcement officer” is defined as an individual who:

- has retired in good standing from service with a government agency as a law enforcement officer for an aggregate of fifteen (15) years or more for reasons other than mental instability, or retired from such an agency due to a service-connected disability after completing any applicable probationary period of such service;
- was authorized by law to engage in or supervise the prevention, detection, investigation, prosecution or the incarceration of any person for any violation of law;
- had statutory powers of arrest;
- has a non-forfeitable right to benefits under the retirement plan of the agency for which he was employed;
- meets, at his own expense, the same standards for qualification with a firearm as an active officer within the State in which he resides;
- is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- is not prohibited by Federal law from possessing a firearm. Qualified retired law enforcement officers must carry the photographic identification issued by the agency for which they were employed and documentation, which shows that they have met the qualification standards in their State of residence for the firearm, they are carrying.

The definition of “firearm” specifically excludes machine guns, silencers, explosives or other destructive devices as these terms are defined in Federal law.

I am a fully sworn law enforcement officer with statutory law enforcement authority, but I work for a private university or other non-governmental employer. Will I be able to carry under the provisions of H.R. 218?

No. You must be an employee of a local, State or Federal governmental agency to carry a firearm under the provisions of this legislation.

My agency has a policy that does not allow me to carry my firearm while I am off-duty. Does this mean that this legislation will not benefit me?

If you are a qualified active law enforcement officer, you will legally be able to carry a firearm under the provisions of H.R. 218. There may be agencies that enforce or adopt policies, rules, regulations, or employment conditions which discourage or punish officers that choose to carry while off-duty, but such actions do not mean that the officer cannot carry under the provisions of the bill.

I am a retired officer— how do I qualify to carry under the provisions of this bill?

The legislation requires retired law enforcement officers to meet the active duty standards for qualification with a firearm in the State where they reside. Retired officers must qualify at their own expense and, once they do, will be able to carry the firearm with which they have been qualified under the provisions of H.R. 218.

The Department of Public Safety CWPU will issue a certificate of firearms proficiency to retired officers who have qualified with their firearm and submitted the required documents and fee. Retired officers must carry this documentation in addition to their retired LEO credentials.

Does this bill allow me to carry a firearm on an airplane?

No. This legislation exempts qualified active and retired law enforcement officers from most state and local laws regarding the carrying of concealed firearms. The carriage of firearms on aircraft is regulated by other Federal statutes and airline policy.

Arizona Peace Officer Standards and Training

50-SHOT DAYTIME QUALIFICATION COURSE

TARGET TQ-15, 19 AND 21 (or silhouette as approved by Board)

MAXIMUM SCORE 250, 210 MINIMUM

USING SERVICE HANDGUN AND AMMUNITION

Per R13-4-116(E)

Officers will begin in a standing relaxed position, hands off the weapon and eyes on the target. All weapons will be in their holster with straps secured. During the course of fire, weapons will be held in the ready position, at a 45 degree angle down range toward the target. Return weapons to the holster only upon command.

STAGE 1 - Twenty-Five Yard Line

Six rounds, standing, two hands, single or double action. Fired in three strings of two rounds each as follows: load six rounds and place the weapon in the holster. On command, draw and fire two rounds in six seconds. Assume the ready position. On command, fire two rounds in five seconds. Assume the ready position. On command, fire two rounds in five seconds.

STAGE 2 - Three Yard Line

Eighteen rounds, standing, double action in three separate stages of strong hand only, two hands, and support hand only.

A. Strong hand only - fire six rounds in three strings of two rounds each as follows: load six rounds and place the weapon in the holster. On command, draw and fire two rounds in three seconds. Assume ready position. On command, fire two rounds in two seconds. Assume ready position. On command, fire two rounds in two seconds.

B. Two hands - fire six rounds in three strings of two rounds each as follows: load six rounds and place the weapon in the holster. On command, draw and fire two rounds in three seconds. Assume ready position. On command, fire two rounds in two seconds. Assume ready position. On command, fire two rounds in two seconds.

C. Support hand only - fire six rounds in three strings of two rounds each as follows: load six rounds and assume the ready position. On command, fire two rounds in three seconds. Assume ready position. On command, fire two rounds in three seconds. Assume ready position. On command, fire two rounds in three seconds.

STAGE 3 - Seven Yard Line

Fourteen rounds, standing, two hands, double action.

A. Load six rounds and place the weapon in the holster. On command, draw and fire three rounds in four seconds.

B. Assume ready position. On command, fire three rounds tactical, reload with a minimum of three rounds and fire three for a total of six rounds in fifteen seconds.

C. Assume ready position with three loaded rounds. On command, fire three rounds, conduct an empty gun reload with a minimum of two rounds and fire both for a total of five rounds in twelve seconds.

STAGE 4 - Fifteen Yard Line

Twelve rounds, standing, two hands, double action.

A. Load six rounds and place the weapon in the holster. On command, draw and fire three rounds in five seconds. Assume ready position. On command, fire three rounds in four seconds.

B. Load six rounds and place the weapon in the holster. On command, draw and fire two rounds in four seconds. Assume ready position. On command, fire one round in two seconds. Place the weapon in the holster (repeat above for remaining three rounds).

Scoring:

TQ-15: From the center scoring area moving outward five, four, and two points.

TQ-19 and TQ-21: five points for shots within the scoring area, zero points for shots on the silhouette, but outside the scoring area. Line shots are counted as "in" on all three targets.

Arizona Peace Officer Standards and Training

50-SHOT NIGHTTIME QUALIFICATION COURSE

TARGET TQ-15, 19 AND 21 (or silhouette as approved by the Board)

MAXIMUM SCORE 250, 210 MINIMUM

USING SERVICE HANDGUN AND AMMUNITION

Per R13-4-116(E)

This course of fire must be conducted during the hours of darkness. Stages of fire indicated as "LOW LIGHT" must be shot with a minimum of ambient light illuminating the target (e.g., mid-block simulation or grounded flashlight aimed off to the side or beneath the target face). Stages of fire indicated as "NO LIGHT" must be shot with no illumination other than the aid of a flashlight, held in the off hand and displayed upon the target face only upon the command to fire. Reloading must be conducted in total darkness. Officers will begin in a standing relaxed position, hands off the weapon and eyes on the target. All weapons will be placed in their holster with straps secured. During the course of fire, weapons will be held in the ready position, 45 degree angle down range toward the target and weapons will be returned in the holster only upon command.

STAGE 1 - Three Yard Line LOW LIGHT (Ambient)

Eighteen rounds, standing, double action in three separate stages of strong hand only, two hands, and support hand only.

A. Strong hand only - Fire six rounds in three strings of two rounds each as follows: load six rounds and place the weapon in the holster. On command, draw and fire two rounds in three seconds. Assume ready position. On command, fire two rounds in two seconds. Assume ready position. On command, fire two rounds in two seconds.

B. Two hands - Fire six rounds in three strings of two rounds each as follows: load six rounds and place the weapon in the holster. On command, draw and fire two rounds in three seconds. Assume ready position. On command, fire two rounds in two seconds. Assume ready position. On command, fire two rounds in two seconds.

C. Support hand only - Fire six rounds in three strings of two rounds each as follows: load six rounds and assume the ready position. On command, fire two rounds in three seconds. Assume ready position. On command, fire two rounds in three seconds. Assume ready position. On command, fire two rounds in three seconds.

STAGE 2 - Seven Yard Line LOW LIGHT

Twelve rounds, standing, two hands, double action.

A. Load six rounds and place the weapon in the holster. On command, draw and fire three rounds in five seconds.

B. Assume the ready position. On command, fire three rounds, reload and fire three more rounds in 18 seconds.

C. Assume the ready position. On command, fire three rounds in four seconds.

STAGE 3 - Fifteen Yard Line LOW LIGHT

Six rounds, standing, two hands, double action.

A. Load six rounds and place the weapon in the holster. On command, draw and fire three rounds in seven seconds.

B. Assume the ready position. On command, fire three rounds in six seconds.

STAGE 4 - Seven Yard Line NO LIGHT

Fourteen rounds, standing, strong hand only, double action.

A. Load six rounds in total darkness. Assume the ready position with flashlight held in support hand.

B. On command, simultaneously direct flashlight on target face and fire two rounds in three seconds, turning off flashlight between strings of fire. Repeat for a total of six rounds.

C. Reload with six rounds in total darkness and assume ready position with flashlight in support hand.

D. On command, simultaneously direct flashlight on target face and fire two rounds in three seconds, turning off flashlight between strings of fire. Repeat for a total of six rounds.

E. Load two remaining rounds in total darkness and assume ready position with flashlight in support hand.

F. On command, simultaneously direct flashlight on target face and fire two rounds in three seconds.

Arizona Peace Officer Standards and Training
TARGET IDENTIFICATION AND DISCRIMINATION COURSE

(SELECTING/FIRING ON THE WRONG TARGET DISQUALIFIES STUDENT)
PASS/FAIL ONLY
Per R13-4-116(E)

TARGET: Any target that will cause the student to assess, select and discriminate.
Maximum distance - seven yards.
Minimum distance - three yards.

Within the latitude provided to accommodate academy discretion in course presentation, the course shall discern whether the student has:

- A. Demonstrated the ability to make an immediate and accurate assessment of a given condition to determine the potential use of deadly force.
- B. Demonstrated the ability to make an immediate and accurate selection of an individual who may pose life-threatening endangerment.
- C. Demonstrated the ability to immediately and accurately discern a life-threatening individual and use reasonable force as may be necessary to establish control.
- D. Demonstrated the ability and skill required to make an immediate and accurate target identification under stressful conditions.

The student must successfully complete a block of shoot/no shoot scenarios. The minimum number of scenarios in a block will be three. The block of scenarios will contain at least one "no shoot" scenario and at least one "shoot" scenario. The scenarios will contain one or more of the following types of targets:

1. "Friendly" (no shoot target);
2. "Challenge" (a threatening target not requiring the immediate use of deadly force); and
3. "Deadly" (a target requiring the immediate use of deadly force).

Qualification will be pass/fail. A student must successfully complete a block of scenarios. Firing on the wrong target or failing to fire on a life-threatening target will disqualify the student.

CCW INSTRUCTOR RESPONSIBILITIES

CCW Instructor Responsibilities

CCW instructors have a great responsibility, to both their students and the public. They are legally bound to present the material they teach thoroughly and professionally. Deviating from an approved training program can result in severe penalties, both criminally and civilly, for the instructor and the organization. Although anyone can take a CCW course, not everyone is eligible to obtain a CCW permit. Consider advising your students of the following before starting your class:

- Anyone with a **felony conviction** is disqualified from obtaining a permit, even if the conviction was expunged, vacated or set aside and/or their rights have been restored, even the right to own a firearm.
- Applicants with a **record of a felony arrest** should be prepared to produce court records that clearly state the charges were dismissed, not prosecuted or they were found not guilty. This includes applicants with a felony arrest and the charge was an "open ended" felony in which the final conviction was designated a misdemeanor.
- Applicants with a **misdemeanor conviction related to domestic violence** are also disqualified unless the conviction was expunged, vacated or set aside. No other misdemeanor convictions affect qualification for a permit.
- Persons who were born outside of the United States or one of its territories must send a copy of (or present in person) proof of citizenship or alien status. This is a one-time requirement. If you have previously submitted documentation, you do not need to send it again. Any of the following documents are acceptable:
 - Certificate of Naturalization
 - Resident Alien Card
 - Record of Birth Abroad
 - Record of Birth to Armed Forces Personnel
 - US Passport

AZ CCW Instructors must teach from a CWPU approved lesson plan. The CWPU determines what constitutes an approved lesson plan. Effective August 1, 2003, all organizational instructors must teach the AZ DPS approved lesson plan for both the 8-hour initial and 2-hour renewal courses. Do not allow students to keep DPS approved tests or answer sheets!

Modifications to basic CCW program instruction. A lesson plan may not be modified without approval of the CWPU and must be taught in its entirety. If an organization desires to include additional elements of training, those elements will not be considered a part of the lesson plan and will require additional training time after the approved lesson plan has been taught. In effect, those additional elements will constitute proprietary training other than the basic Firearms Safety/CCW permit training program authorized by the CWPU. Permission from the CWPU is not needed for such training.

Unauthorized modifications to a lesson plan. Significant deviation from a lesson plan is unacceptable and will result in the suspension/revocation of the instructor and organization. Gross deviation can result in criminal prosecution. Additionally, deviations can also result in the rejection of student applications for unauthorized training.

CCW training philosophy.

The DPS lesson plans are meant to provide a standardized program of instruction so that all applicants receive a solid FIREARMS SAFETY block of training. Additionally, the applicant is required to receive law and legal instruction, along with other topics mandated by the legislature. This course was never intended to be a tactical firearms training program.

Historically, we have had organizations and instructors going in many different directions when it comes to CCW training. So different in fact that one lesson plan didn't resemble another (when taught). Each applicant should be able to receive the same (at least substantially) course of instruction, regardless of the instructor or organization. This lesson plan is NOT a verbatim document to be read from. This lesson plan DOES intend to provide a topic for the instructor to cover, based upon the instructors experience and education on the topic. Not all instructors are equal. This lesson plan provides the bare bones minimum TOPICS and SUB-TOPICS that must be taught. As long as the information provided by the instructor can obviously be related to a given topic or sub-topic, there will not be a problem between that instructor and the DPS. If an instructor is found to be teaching a class on engaging multiple attackers from a fortified structure, that instructor shall be deemed to be substantially deviating from the lesson plan. However, if an instructor in the Tucson area is found to be teaching a Tucson City ordinance that is related to the carrying of weapons in a park (during the legal section of the lesson plan), kudos' are in order for taking the initiative since it is important, relevant and needed for that particular area. This lesson plan is intended to be a progressive document that can bend A LITTLE. It is subject to SOME interpretation, based upon the instructor's/organization's experience, knowledge and region. Keep specific instruction within bounds. Be reasonable and professional. Don't allow personal feelings and prejudices to interfere with your responsibility to teach objectively. Follow the lesson plan: it is meant to GUIDE your instruction, not channelize it.

Please note: We are not looking to suspend instructors or organizations for being creative or using their ingenuity to successfully train their students. Again, use the lesson plans to guide your instruction. It is up to you to add specific content for each topic and sub-topic. The topics listed in each section and sub-section are topics for discussion, based upon your knowledge and experience of that topic (sub-topic). It is incumbent upon you to provide the "meat" of these topics. We will not tell you what to say word for word. We provide the topic; you (the instructor) provide the substance. As long as your information is within the boundaries of recognized and reasonable firearms/tactical instruction, we are not going to have an issue with that.

We are aware that some of you only accept people whom you know to be very experienced with handguns and tactics. Some of you conduct mixed classes. The rule for tailoring classes is this: know your students. If you have a class comprised of ten students who invented the SWAT advanced tactical shooting techniques for Phoenix PD and one student who has never seen a handgun in real life, you must teach the class at the most basic level for that one student. The others may find it "painful," but that is the way it must be. Conversely, if your class is comprised of ONLY the SWAT team, you probably will not spend a tremendous amount of time on the topic of "components of a handgun" (but you will spend some time on it, albeit not much, a "review" so to speak).

Be warned, before you start tailoring your class for a group of attorneys who claim they invented advanced tactical shooting techniques, have actually built custom handguns and have been members of a shooting review board for twenty years, you must confirm this is the case (tailoring is determined by the amount of time spent on a topic).

The point is, many people may claim to have experience and knowledge that they really do not (or it is so old that they don't actually remember it). How do you confirm it? Talk to them and pick their brains. You'll know. If in doubt, teach at the most basic level.

The methods you choose to deliver your class are up to you. Videos, "death by PowerPoint", re-enactments, slides, hands on practicals, and lecture, to name a few, are all acceptable methods of training. Make sure they are on the topic being taught! We recommend you use a combination of these methods to keep your class interesting. Eight hours of lecture will likely exhaust your students and should be avoided (unless you are a VERY dynamic speaker). Dull, plain PowerPoint slides are equally bad. Use your ingenuity along with the lesson plan to provide an informative, yet entertaining experience for your students.

If you have any questions regarding CCW, please feel free to call.

All training must occur within Arizona, unless changes to the rules are made in the future. Failure to comply will result in the suspension of your certification and organization. Additionally, any student trained outside of Arizona will be suspended.

Instructors are obligated to assist their students with the application process. You will provide each student with an application, fingerprint card and a return envelope. On the application, ensure that all blocks are filled in with the correct information, particularly the backside, which includes the Training Program Number, Training Instructor Number and Training Organization Number. Assist your students with correctly completing fingerprint cards. Correctly entering all information is critical; inaccurate entries will result in your student's application and/or fingerprint card being rejected. You are required to keep CCW related records for a minimum of 5 years. Instructors may obtain blank applications, fingerprint cards and return envelopes from the CWPU by ordering via email, US Postal Service or by phone/fax.

Training time versus Administrative time. Administrative time includes, but is not limited to, fingerprinting students, reviewing applications, driving to a range and other related activities which are not training. Lesson plans are very specific as to what will be taught during training time. A 10 minute break taken after every 50 minutes of instruction is acceptable and does not require special scheduling or permission.

Instructors must fail students who do not complete training or who do not sufficiently understand the curriculum. Instructors are under no obligation to pass every student who takes their class. On the contrary, instructors who perceive they have "problem" students who do not sufficiently participate, who are disruptive or who seem to have other problems or issues which concern the instructor sufficiently that they question whether this student should be in possession of a firearm should either reschedule the student or release them from the class. For these reasons, instructors may not fill out applications until students satisfactorily complete the training. Do not allow a student who falls into this category to leave with an application that contains your instructor and program information.

The fingerprint card is another important document that requires accuracy. Only fingerprint cards obtained from the CWPU are acceptable. Read the instructions on this website before attempting to complete applicant fingerprint cards. All required information should be entered on the top of the card. Do not sign your name on a blank card and allow the applicant to leave and be fingerprinted elsewhere. Any instructor can take the fingerprints for the applicant; however, the prints must be clear and legible.

An applicant may fingerprint themselves, meaning that no one is required to physically roll the applicant's fingers; sometimes it is easier for them to do it themselves. Just ensure that they put the correct finger in the corresponding box. Fingerprint technicians or instructors who assist with or take prints for students will sign the card in the "Signature of Official Taking Fingerprints" box. Less ink is better than too much ink when taking prints. Cards with black "globs" of ink in the boxes will result in your student's application being returned to them. If in doubt has to how to correctly take the prints, follow the instructions on the back of the card. Do not put tape over the inked prints.

Instructors must attend the 8 hr DPS Firearms Safety Training Course before they are qualified to teach initial or renewal CCW training. This class is provided quarterly at the DPS compound located at 2010 West Encanto Blvd. in Phoenix. You may call (602) 256-6280 from the Phoenix area or (800) 256-6280 from other Arizona locations to get class dates. Current class dates are also provided on the Procedures and Information page. Alternate methods include sending a written request to the Concealed Weapon Permit Unit, PO Box 6488, Phoenix, AZ 85005 or via email to ccw@azdps.gov. Upon completion of the course, you will be given a certificate, a lesson plan and the training program number for renewal classes. The lesson plans for the initial 8 hr and 2 hr renewal CCW classes will be provided to you once you are approved to instruct. DO NOT instruct until you have received your approval documents.

Both the 8-hour initial and 2-hour renewal classes have their own program numbers issued by the CWPU, regardless of which organization teaches it. The initial and renewal class program number is provided to each instructor who completes the 8-hour DPS class and is approved as an instructor. Please be careful to enter the correct number on your student's application, depending on which class you taught (8 hour initial vs. the 2 hour renewal). Applications received by the CWPU with the incorrect number will be returned to your students for correction, who in turn will be contacting you for the correct number.

Once approved, a CCW Instructor's certification expires after five years. This is due to rule changes implemented January 1, 2005. Instructors may renew their permit by attending the 8 hr AZ DPS Firearms-Safety Instructor Class and submitting an affidavit of firearm qualification. Instructors may renew their instructor certification after five years by attending the 8-hour DPS Firearms-safety class within six months of expiration and submitting an application for renewal, a fingerprint card, and evidence for teaching or co-teaching a designated numbers of CCW permit classes. Please notify the AZ DPS CCW Unit if you will no longer be teaching CCW classes.